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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 675

FREMONT CAKE & MEAL COMPANY, A CORPORATION,
Petitioner,

v.

WILSON & COMPANY, INC., A CORPORATION,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEBRASKA

Petitioner prays that a writ of certiorari be issued to review a judgment on a directed verdict and order of the District Court of Dodge County, Nebraska, entered on September 24, 1949, directing a verdict for the respondent and entering judgment for it in the sum of $41,175.00 against the petitioner, which judgment was affirmed by the Supreme Court of Nebraska in an opinion dated August 2, 1950 and a motion for rehearing overruled by that Court on January 13, 1951.

Opinion Below

The opinion of the Supreme Court of Nebraska has not yet been reported in the official Nebraska reports but is reported in 43 N. W. (2d) 657. A copy of this opinion is attached to this petition as Exhibit B of the Appendix to the petition (*infra*) p. 23.

Jurisdiction

The date of the overruling of the motion for a rehearing by the Supreme Court of Nebraska is January 13, 1951.

Questions Presented

1. Whether a State Court is required to enforce a written agreement for arbitration in a contract involving interstate commerce, if the right to arbitration is not waived.

2. Whether a State Court may disregard the declaration by Congress in the Federal Arbitration Statute, Section 2 (Title 9, U. S. C., Sec. 2, July 30, 1947, c. 392, Sec. 1, 61 Stat. 669), to the effect that a written provision in any contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract "shall be valid, irrevocable and enforceable."

3. Whether a State Court may disregard large parts of a contract involving interstate commerce and defenses and other rights available to the parties thereunder because such provisions refer to enforcement thereof by arbitration and the courts of the State refuse to enforce any agreement requiring arbitration.

4. Where a contract involving interstate commerce requires arbitration as a condition precedent to the bringing of any action, may the State Court disregard the requirement and entertain the action, as though such provision were not valid, irrevocable and enforceable?

5. Is the question of the right to arbitration of a controversy arising out of a contract involving a transaction in interstate commerce controlled by the Federal statute and decisions thereunder, or by State laws and decisions.[1]

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[1] Other points to be presented if a writ is granted are:

a. May a state court deny to a party to a contract the benefit of substantial defenses thereunder merely because the agreement provides for

Statute Involved

The jurisdiction of this Court is invoked under 62 Stat. 929, June 25, 1948, c. 646, Section 1257 (3) of Title 28, U. S. C. The points discussed also involve Title 9, U. S. C. Section 2, July 30, 1947, c. 392, Sec. 1, 61 Stat. 669.

Paragraph (3) of 62 Stat. 929, June 25, 1948, c. 646, confers upon this Court jurisdiction to review by writ of certiorari judgments or decrees of the highest court of a State in which a decision could be had where a title, right, privilege or immunity is specially set up or claimed under a statute of the United States.

The following decisions sustain the power and jurisdiction of this Court to review the order and judgment, review of which is herewith sought:

Nutt v. *Knut,* 200 U. S. 12;
Brown v. *Western Ry. of Ala.,* 338 U. S. 294;
Jones Nat. Bank v. *Yates,* 240 U. S. 541;
Miller v. *Lancaster Bank,* 106 U. S. 542.

The Federal question of the right of the petitioner to have the controversy herein submitted to arbitration in ac-

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their enforcement by arbitration and that court refuses to enforce the obligations to arbitrate?

b. Is a party excused from performing a contract where he has provided therein to be relieved in the event of war and interference with performance for that reason as an excuse, although enforceable by arbitration, and he is so limited in production by war regulations and war restrictions on repairs and replacements that he is unable to perform his contract?

c. Where the time for performance of a contract has expired, is a promise thereafter for delivery without any new consideration enforceable where no damage resulted from the failure to deliver within the original time limit?

d. Did the Supreme Court of Nebraska err in affirming the order of the District Court of Dodge County, Nebraska?

e. Where arbitration is a condition precedent under the agreement, does the party against whom a claim is asserted have to proceed with the procedures of arbitration, in order not to lose his right, or is it sufficient if he continually claims at every opportunity that the opposing party may only proceed by way of arbitration?

cordance with the written contract between the parties and Section 2, Title 9, United States Code (Appendix A, *infra*, pp. 22), was raised in the following manner in the State Court:

1. In the trial court a motion was made on June 24, 1949 to continue the case until arbitration could be had (R., p. 8, Tr., pp. 13-17). This motion was overruled on September 8, 1949 (R. 37, Tr., p. 32).

2. A further motion to stay proceedings until a decision could be had in the action to compel arbitration brought in the United States District Court for the District of Nebraska, Lincoln Division, was made on September 12, 1949 (R. 37, Tr., pp. 33-41). This motion was overruled by the trial court on the ground that the "parties cannot oust the jurisdiction of the Courts by Contract," on September 16, 1949 (R., p. 95, B. of Ex., p. 10).

3. On September 19, 1949, the first day of the trial of the action after the jury was empaneled but before any evidence was introduced, the petitioner moved the Court to dismiss the action as prematurely brought "for the reason that there is no showing that any arbitration proceedings have been held in regard to this controversy in accordance with the requirements of the contract and the Statutes of the United States and the laws of the State of Nebraska (R., p. 95, B. of Ex., p. 10). The same day that motion was overruled (R. 95, B. of Ex., p. 10).

4. During the trial large portions of the contract defining the rights and liabilities of the parties were excluded on the ground that there was a reference to arbitration in such portions of the agreement (R. 178-189, B. of Ex., pp. 162-232, 354-356).

5. At the close of respondent's case petitioner moved to dismiss the petition on the ground that arbitration had not been had according to the requirements of the contract

and this motion was overruled (R. 167, B. of Ex., pp. 139, 140).

6. On appeal to the Supreme Court of Nebraska error was assigned as to each of the rulings, as follows:

Assignment of Errors

> 8. "The Court erred in not admitting the arbitration rules in evidence as a part of the contract between the parties."
>
> 11. "The Court erred in not holding that arbitration was a condition precedent to any enforcement of the contract herein."
>
> 12. "The Court erred in not enforcing Title 9, United States Code Annotated, Section 2, and holding that the requirement for arbitration in the contract involved in this action was 'valid, irrevocable and enforceable.' "
>
> 13. "The Court erred in holding that the question of arbitration involved in this case was controlled by the laws of the State of Nebraska and not the Federal statutes on arbitration and the decisions thereunder."
>
> 14. "The Court erred in holding that the Federal statutes on arbitration oust the jurisdiction of the State Courts."

7. The Supreme Court of Nebraska in its opinion denied the right of the petitioner to enforcement of the requirement for arbitration under the Federal arbitration statute, saying:

> "The Fremont company asserts the contract is subject to the rules of the National Soybean Processors Association which appear in the Year Book and Trading Rules of the National Soybean Processors Association. Rule 115 contained therein deals with arbitration. Rule 116 deals with contingencies, and specifically refers to war. We will discuss this rule later in the opinion. In addition, rules for arbitration of the American Arbitration Association are also perti-

nent to the contract, and the Fremont company asserts that the refusal of the trial court to admit into evidence all of such rules relating to arbitration constitutes prejudicial error. Further, the United States Arbitration Act, Title 9, U. S. C. A., sections 2, 3, and 4, are applicable and should be enforced in the State Courts, and the failure of the trial court to so do constitutes prejudicial error.

"In this act it is provided that a written provision in any contract involving commerce to settle by arbitration an existing controversy arising out of such contract shall be valid and enforceable. By section 3 it is provided that if any suit or proceeding be brought in any court of the United States upon any issue referable to arbitration, the court in which the suit is pending, shall, on application of one of the parties stay the trial until such arbitration has been had, provided the applicant for the stay is not in default in proceedings in such arbitration.

"Section 4 provides in part as follows: 'A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any court of the United States which, save for such agreement, would have jurisdiction under the judicial code at law, in equity, or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement.'

"The proper legal steps were taken by the Fremont company to present to the district court for Dodge County the question as to whether or not arbitration should be invoked by the trial court in the instant case. The trial court ruled against the Fremont company on its contention in such respect.

"A brief history in this litigation is appropriate to relate in connection with this assignment of error. On July 11, 1947, Wilson & Company filed suit in the United States District Court for the District of Nebraska, Omaha Division, to recover damages against

the Fremont company for alleged breach of contract (the contract involved in the instant case). On August 2, 1947, the Fremont company filed a motion to stay proceedings until arbitration had been had in accordance with Title 9, U. S. C. A., section 3. This motion was sustained. Subsequent proceedings in the Federal Court hereinafter referred to disclose no order upon the ruling of the Court was signed by the parties or presented to the Court for approval. See *Wilson & Co.*, v. *Fremont Cake & Meal Co.*, 77 F. Supp. 364.

"On July 19, 1948, Wilson & Company filed a motion to dismiss its action in the United States District Court. This was before the service or filing of an answer by the Fremont company. This motion was sustained. In sustaining the plaintiff's motion the Court said the plaintiff had, perhaps still has, the absolute choice of forums for the recovery of the damages it claims, beyond the possible intervention of the defendant. By plaintiff is meant Wilson & Company, by defendant is meant the Fremont company. That reflection does not enter into the ruling upon the point; but it obviates the suggestion that the procedure that is made mandatory in the Federal Court is being imposed upon a litigant brought there against its will and thereby deprived of the supposed advantages to it of the State Court's traditional usages unaffected by Title 9, U. S. C. A., section 3. See *Wilson & Co., Inc.* v. *Fremont Cake & Meal Co., supra.*

"The instant case was filed by Wilson & Company in the district court for Dodge County on October 29, 1948. The case proceeded to trial in the latter part of September 1949, and judgment was entered on the verdict on September 24, 1949.

"On April 8, 1949, the Fremont company filed an original action in the United States District Court for the District of Nebraska, Omaha Division, seeking an affirmative order to require Wilson & Company to submit this controversy to arbitration, as provided for in U. S. C. A., Title 9, section 4. This original action was filed while the instant action was pending and

undetermined in the district court for Dodge County, Nebraska. The United States District Court dismissed the Fremont company's original action filed therein on October 8, 1949, holding that the Fremont company not only had taken none of the explicitly defined steps to institute arbitration, but that its course in the entire controversy had been dilatory and obstructive only. Despite the early threats of Wilson & Company in two letters to invoke the arbitration clause of the contract, it remained silent on the question touching arbitration and did not itself initiate the process or even assent to Wilson & Company's suggestion of its liability. See *Wilson & Co., Inc.* v. *Fremont Cake & Meal Co.*, 83 F. Supp. 900.

"This case was appealed to the United States Court of Appeals, 8th Circuit, and on June 27, 1950, an opinion was rendered by that Court wherein the United States District Court was affirmed. There is no occasion to quote from the opinion, except to say that the Circuit Court stated the State Court obtained jurisdiction of the controversy between Wilson & Company and the Fremont company long prior to the commencement of the present proceeding. 'A conflict of jurisdiction is always to be avoided if possible and it is a general rule that the right of a plaintiff to prosecute his suit in a court having once attached, will not be taken away by proceedings in another court. The decision in this case does not purport to interfere in any respect with the jurisdiction of the State Court but unless it could have such an effect it can not be said to determine any actual substantive controversy between the parties.' *Fremont Cake & Meal Co.* v. *Wilson & Co., Inc.*, 183 F. 2d 60.

"In connection with this assignment of error the following authorities of this jurisdiction are applicable.

"Whatever distinction may be made elsewhere between arbitration generally and arbitration as to damages only, it is well settled in this State that a provision in a contract requiring arbitration, whether of

all disputes arising under contract, or only the amount of loss or damages sustained by the parties thereto, will not be enforced, and that refusal to arbitrate is not available to the parties in an action growing out of the contract. See, *Schrandt* v. *Young*, 62 Neb. 254, 86 N. W. 1085; *National Masonic Accident Assn.* v. *Burr*, 44 Neb. 256, 62 N. W. 466; *German-American Ins. Co.* v. *Etherton*, 25 Neb. 505, 41 N. W. 406; *Rentschler* v. *Missouri P. R. R. Co.*, 126 Neb. 493, 253 N. W. 694, 95 A. L. R. 1.

"We conclude that the Fremont company's assignment of error here discussed cannot be sustained."

It will be noted that the Supreme Court stated:

"The proper legal steps were taken by the Fremont company to present to the District Court of Dodge County the question as to whether or not arbitration should be invoked by the trial court in the instant case. The trial court ruled against the Fremont company on its contention in such respect" (R., p. 61).

In regard to the right of enforcement of the arbitration provisions in the Supreme Court, it will be noted that that Court said:

"In connection with this assignment of error the following authorities of this jurisdiction are applicable.

"Whatever distinction may be made elsewhere between arbitration generally and arbitration as to damages only, it is well settled in this State that a provision in a contract requiring arbitration, whether of all disputes arising under contract, or only the amount of loss or damage sustained by the parties thereto, will not be enforced, and that refusal to arbitrate is not available to the parties in an action growing out of the contract. See, *Schrandt* v. *Young*, 62 Neb. 254, 86 N. W. 1085; *National Masonic Accident Assn.* v. *Burr*, 44 Neb. 256, 62 N. W. 466; *German-American Ins. Co.* v. *Etherton*, 25 Neb. 505, 41 N. W. 406; *Rentschler* v. *Missouri P. R. R. Co.*, 126 Neb. 495, 253 N. W.

694, 95 A. L. R. 1. We conclude that the Fremont company's assignment of error here discussed cannot be sustained'' (R., pp. 62, 63).

Statement

1. There is a clear conflict in the present case between the authority of the Congress of the United States and the Courts of the State of Nebraska concerning the enforceability of an arbitration provision in a contract involving interstate commerce. In Title 9, Section 2, United States Code, Congress has directed that such an arbitration provision shall be valid, irrevocable and enforceable. The District Court of Nebraska and the Supreme Court of Nebraska have both held in this case that such a requirement for arbitration is in Nebraska, invalid and unenforceable under a long line of decisions.

In *Jackson* v. *Kentucky River Mills,* 65 F. Supp. 601, the United States District Court for the District of Kentucky, held that Section 2, Title 9, United States Code, provided a substantive right.[2] In *Wilson & Co.* v. *Fremont Cake & Meal Co.,* 77 F. Supp. 364, the United States District Court for the District of Nebraska, held in like manner in a companion case where an application for a stay under Title 9, Section 3, United States Code, was granted.[3]

In the case of *Gatliff Coal Co.* v. *Cox,* 142 F. (2d) 876,

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2 It said: ''When Congress declares that a provision for arbitration in any contract involving interstate commerce or a maritime transaction is valid, irrevocable and enforceable, the enforcement of such a provision is a substantive right.''

3 It said: "Then the second section proceeds to lay down a rule of substantive law regarding the validity of an agreement for arbitration in case of any maritime transaction or a contract evidencing a transaction involving commerce. Congress was here making a rule concerning subject matter within its own constitutional legislative authority. It was not seeking to confer validity to arbitration agreements generally, a matter outside the scope of Federal powers. Instead it picked out two important classes of transactions within the Federal legislative domain and declared the effect of arbitration clauses in agreements concerned therewith.''

the Circuit Court of Appeals for the Sixth Circuit held that an agreement that all differences arising under a contract shall be submitted to arbitration relates to the law of remedies and the law that governs remedies is the law of the forum.

In *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U. S. 109, 123, this Court said the substantive right created by an agreement to submit disputes to arbitration is recognized as a perfect obligation.

Thus we find a conflict between the Federal Courts as to scope and effect of the Federal Arbitration Act and a complete disregard of its provisions by the Supreme Court of Nebraska in this case.

In a comparable situation regarding the provisions of Section 301 (a) of the Labor Management Relations Act of 1947, the Federal Courts have held that a new substantive right actionable in the Federal Courts was created by Congress.[4]

2. The situation here well demonstrates the thwarting of the congressional purposes and objects set forth in the Federal Arbitration Act.

On July 11, 1947, respondent filed a complaint against petitioner in the United States District Court for the District of Nebraska, Omaha Division, seeking damages in the sum of $43,005.00 for the failure of petitioner to deliver six tank cars of soybean oil under the written contract involved in this appeal (R., p. 41, Tr., pp. 35, 36).[5] Petitioner

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[4] *Textile Workers Union of America, C. I. O.* v. *Aleo Mfg. Co.*, 94 F. Supp. 626: "The remedy created by provision of Labor Management Relations Act conferring upon Federal District Courts jurisdiction in actions for violation of a contract between employer and labor organization representing employees in an industry affecting commerce creates a Federal remedy which is not controlled by State law." To like effect, see *Shirley-Herman Co.* v. *International Hod Carriers, etc.*, 182 F. 2d 806.

[5] See opinion *Wilson & Co.* v. *Fremont Cake & Meal Co.*, 77 F. Supp. 364. This was the same contract and almost identical complaint with the one involved in this petition for certiorari.

did not answer but filed a motion to stay the proceedings pending arbitration under Section 3, Title 9, United States Code. The Court sustained the motion. Before a formal order was entered, respondent dismissed the complaint without prejudice and brought the action now appealed from in the District Court of Dodge County, Nebraska (R., pp. 41, 42, Tr., pp. 37, 38).

Before answering to that petition and on April 8, 1949, the petitioner here filed a complaint against the respondent in the United States District Court of Nebraska, Omaha Division, to require the respondent to arbitrate the controversy under the agreements in the written contract (R., pp. 11-16, Tr., pp. 17-22). The District Court dismissed the complaint on the merits on the ground that although it was stipulated that the respondent refused to arbitrate, the petitioner here had taken none of the definitive steps to initiate arbitration.[6] The dismissal was affirmed on the ground that the case was moot since the State Court had entered judgment in favor of the respondent herein in the amount of $41,175.00 and on the merits.[7]

The Court of Appeals for the Eighth Circuit affirmed the lower court in holding that the respondent should have proceeded with the definite steps for arbitration if it was to obtain an affirmative order under Section 4 even though it was stipulated and pleaded in the action to compel arbitration under Section 4 of the Arbitration Act that the

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[6] The Court said in *Fremont Cake & Meal Co.* v. *Wilson & Co., Inc.*, 83 F. Supp. 900: "It has taken no affirmative action looking to the resolution, by any forum, of its differences with Wilson & Company."

[7] In *Fremont Cake & Meal Co.* v. *Wilson & Co., Inc.*, 183 F. (2d) 57, the Court of Appeals for the Eighth Circuit said: "A conflict of jurisdiction is always to be avoided if possible and it is a general rule that the right of a plaintiff to prosecute his suit in a court having once attacked will not be taken away by proceedings in another court. The decision in this case does not purport to interfere in any respect with the jurisdiction of the State Court but unless it could have such an effect it cannot be said to determine any actual controversy between the parties."

respondent had refused to arbitrate and the record showed that it had fought arbitration every step of the way. Such an interpretation of the Act puts an unusual burden upon a party who is not seeking any affirmative action as to the controversy which is to be arbitrated according to the contract. The Statutes and other Federal Courts have always held that rights under the law could not be waived or lost except by conduct that amounted to a relinquishment of rights and privileges under the general law of waiver.[8]

However, the Court of Appeals used care to state that

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[8] Waiver of the right to arbitration requires affirmative action of the party involved to give up the right with full knowledge.

Commencement of an action in court rather than reliance on arbitration with answer by the opposing party on the merits is a waiver by both parties. *Galion Iron Works & Mfg. Co.* v. *J. D. Adams Mfg. Co.*, 128 F. (2d) 411. *American Locomotive Co.* v. *Chemical Research Corp.*, 171 F. (2d) 115, certiorari denied 69 S. Ct. 515, 336 U. S. 909. If one party to a contract brings suit and the other party answers on merits instead of relying on arbitration, conduct may amount to waiver. *Almacenes Fernandez, S. A.* v. *Golodetz*, 148 F. (2) 625, 161 A. L. R. 1420; *Bank of Madison* v. *Graber*, 158 F. (2d) 137.

Where one party seeks to waive, repudiate or abandon arbitration, the other may claim it as a defense.

Uniao De Transportadores Para Importacao E. Commercio, LTDA. v. *Companhia De Navegacao Carregadores Acoreanos*, 84 F. Supp. 582; *Kulukundis Shipping Co. S/A* v. *Amtorg Trading Corp.*, 126 F. (2d) 978; *The Belize*, 25 F. Supp. 663.

This Court in *Shanferoke Co.* v. *Westchester Co.*, 293 U. S. 449, affirmed the Court of Appeals of the Second Circuit and approved the grounds given by that Court in denying the claim of waiver. The Court of Appeals held in *Shanferoke Coal & Supply Corp.* v. *Westchester S. Corp.*, 70 F. (2d) 297, that it was the duty of the plaintiff to take the initiative in seeking arbitration, saying in an opinion by Learned Hand, Circuit Judge, on p. 299: "The plaintiff further objects that the defendant is 'in default in proceeding with such arbitration,' within the meaning of section 3. True, it has not named its arbitrator, but in its answer and moving affidavits has merely expressed its willingness to submit to arbitration. This appears to us enough. It was the plaintiff who declared the contract to be at an end; and with that the defendant was contented. If the plaintiff meant to proceed further and enforce a claim for damages, the initiative rested upon it; it should have named the first arbitrator. If it did not but sued instead, it was itself the party who fell 'in default in proceeding with such arbitration,' not the defendant."

its action should have no effect on the State Court action (p. 12, *supra*). Returning to the State Court action now involved in this petition for certiorari, we find that after the petition was filed by respondent in the State Court action on October 29, 1948, petitioner on November 18, 1948 filed a motion to dismiss for failure to file security for costs required by the Nebraska law, which security having been given after the motion was filed but before ruling, the motion was overruled on November 24, 1948. On December 3, 1948, petitioner filed a motion to make the petition more definite and certain, which was overruled on April 4, 1949. On June 24, 1949, having already on April 8, 1949 filed the complaint to compel arbitration by Wilson & Company, petitioner here filed a motion for a continuance and stay of proceedings, pending the decision by the Federal Court (R., pp. 8-11, Tr., pp. 13-17). That motion was argued before the State Court on August 22, 1949. The Court overruled the motion (R., p. 95, Tr., p. 32).

Petitioner answered, praying for a stay pending arbitration and presenting other defenses (R., pp. 5-7, Tr., pp. 9-11). Before the trial began after the jury was empaneled, petitioner made a further motion to have the State Court proceeding dismissed because it was prematurely brought since there had been no arbitration as required by the contract. This motion was overruled September 19, 1949 (R., p. 95, Tr., p. 52).

The case then went to trial before a jury and the Court excluded large parts of the contract because they provided for enforcement of arbitration (R., pp. 178-189, B. of Ex., pp. 162-232, 354-356). At the close of the case the State Court directed a verdict for the plaintiff and entered judgment in the amount of $41,175.00 against the petitioner herein.

3. The parties agreed that any controversy arising out of the contract in question should be settled by arbitration.[9]

Reasons for Granting the Writ

Petitioner tried in every way to get the matter decided by arbitration. Each of the procedures urging such action is set forth in detail above and will not be repeated.

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[9] "Rule 115—Arbitration.

"Section 1. All controversies arising out of contracts made under these Trading Rules or the breach thereof, unless amicably adjusted otherwise, shall be settled by arbitration in accordance with the Rules, then obtaining, of the American Arbitration Association, and judgment upon the award rendered may be entered in the highest court of the forum, State or Federal, having jurisdiction."

Wilson & Co., Inc. v. *Fremont Cake & Meal Co.*, 77 F. Supp. 364: "The first dispute between the parties is whether there is in their contract any actual agreement to arbitrate. That is one of two primary and equally vital questions presented upon the record. The plaintiff denies that such an agreement was ever made. The contract must, therefore, be examined. It is set out in a footnote.[1]

"Without resting any argument upon this factor, the plaintiff directs the Court's attention to the verbal parsimony which the contract betrays, and to its execution for both parties to it by a single broker. Upon the latter point it need be said only that both parties to this action adopted the memorandum as their contract, the defendant delivered and the plaintiff accepted thirty car loads of oil under it, and the plaintiff's entire complaint rests upon its validity. And, so far as brevity is concerned, it is neither a virtue nor a vice, except as it may disclose or obscure the intent of the makers of an agreement.

"The presently significant language of the contract is: 'Rules National Soybean Processors Association.' Those rules are shown in an exhibit attached to a stipulation in the files, generally entitled: 'Year Book and Trading Rules, 1945-1946, National Soybean Processors Association.' The trading rules governing the purchase and sale of soybean oil are seventeen in number, identified as Rules 101 to 117, both inclusive. Their text covers some fourteen pages of a printed booklet, Rule 115, dealing with arbitration, is in the following language:

"'All controversies arising out of contracts made under these Trading Rules or the breach thereof, unless amicably adjusted otherwise, shall be settled by arbitration in accordance with the Rules, then obtaining of the American Arbitration Association, and judgment upon the award rendered may be entered in the highest court of the forum, State or Federal having jurisdiction.'

"Another booklet presented in evidence by the stipulation includes the rules for arbitration of the American Arbitration Association, which are compre-

It would be difficult to find a case where a party was more consistent in trying to obtain the benefits of its contract under the Federal statute and its interpretations. Is it possible that merely by going from a Federal Court to a State Court a party to a contract involving interstate commerce may defeat the will of Congress regarding arbitration of controversies arising out of a contract involving commerce?

There are thousands of contracts outstanding at all times in the United States where a transaction involving interstate commerce is involved and arbitration of any controversy thereunder is stipulated by the parties in their agreement. How are they to get the benefits of their contract if it can be brushed aside as it was in this case? It is

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hensive and voluminous and provide a detailed program or procedure for arbitration. By the stipulation of the parties upon the submission of this motion, they agree that 'they are the rules which would govern the arbitration requested by the defendant herein.' Of that procedure, this Court now says only that it is obviously operable. Whether resort to it is prudent or desirable is beyond the proper scope of the present study.''

Fremont Cake & Meal Co. v. *Wilson & Co., Inc.*, 83 F. Supp. 900: ''Wilson & Company reasserts in argument all of its formerly tendered objections to the imposition upon it of the obligation to suffer or participate in arbitration of its claim. These include the contentions, (a) that the contract between the parties does not contain a provision for arbitration; (b) that the contract does not evidence any contract involving commerce within the true meaning of Title 9, U. S. C. A., sections 1 and 2; (c) that the application of any or all of the provisions of Title 9, U. S. C. A. is limited to contracts which do evidence a transaction involving commerce; and (d) that there is no arbitrable controversy between the parties. Items (a) and (b) of those positions are sufficiently discussed in the opinion reported in 77 F. Supp. 364. But it may be added, without discussion or particularization, that the additional material now before the Court in the way of letters between the parties and oral testimony serves clearly to confirm the Court's earlier and now reiterated, conclusion that the contract evidences a transaction involving commerce. In the Court's opinion that conclusion eliminates the necessity of passing upon the academic question raised in item (c). And, touching the presence of an arbitrable controversy, the Court, at this time, in view of the entire record before it, including the issues made by the pleadings in the *Dodge County* case, still considers and holds that that question must be answered in the affirmative.''

important to the commercial activity of this country that contracting parties be able to know whether such an agreement for arbitration in a contract involving a transaction in interstate commerce is valid, irrevocable and enforceable, or that such a Federal statute is merely so many words without effect if the other party can rush the case into the State Court first.

Obviously, the plaintiff has the right to choose the forum and in many cases there is no ground for removal. If the State Court has the power to strike down the Federal statute in this manner, arbitration agreements can have effect only when the party asserting the complaint so elects.

The Federal Courts are overburdened with litigation at many points throughout the country. The enforcement of arbitration agreements and proper use of the arbitration statute should relieve some of that load. The statute does not purport to require arbitration against the will of the parties. It is only when they so agree in writing that it applies. Why should a person be relieved of such an agreement any more than the other terms of the contract?

In many cases as in this one the provision for arbitration makes it possible to have persons determine the factual questions and apply principles of commercial law, where they are peculiarly well informed in the field which is the subject of controversy. In this action there were restrictions of the War Food Administration, the Commodity Credit Corporation, the Department of Agriculture and the Office of Price Administration, as well as technical questions as to the amount of oil that can be extracted from a bushel of soybeans by various methods. There were questions about the effect of shutdowns caused by war priorities on the capacity of the plant and the requirement that oil be manufactured out of a certain crop. Respondent knew that these matters would not be disregarded by

arbitrators who were familiar with the practices of the trade and it was for that reason it was very eager to avoid arbitration as was clearly demonstrated.[10]

Even though it first brought its case in Federal Court it departed therefrom as soon as the Court ordered a stay until arbitration could be had. It hoped that all of the technical questions would be promptly brushed aside on the ground that there was a reference to arbitration and

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[10] In *Fremont Cake & Meal Co.* v. *Wilson & Co., Inc.*, 86 F. Supp. 968, Judge Delehant said: "Stated simply, until one party to the contract has pursued its prescribed initiatory steps, it has not made any 'demand' and thereby decisively required the other party to answer, or to act upon, such demand for arbitration; and the vital condition precedent to a mandatory order to proceed to arbitration has not been performed.

"That Fremont Company has taken none of those explicitly defined steps is established by stipulation and evidence. Its course in the entire controversy has been dilatory and obstructive only. It has taken no affirmative action looking to the resolution, by any forum, of its differences with Wilson & Company. Its claimed default in the delivery of soybean oil occurred late in 1946, nearly three years ago. Despite the early threats of Wilson & Company in two letters, *supra*, to invoke the arbitration clause of the contract, it remained silent touching arbitration and did not itself initiate the process or even assent to Wilson & Company's suggestion of its availability. Wilson & Company then sued in this Court. Still, Fremont Company took no steps to commence arbitration. It obtained the ruling announcing the granting of its motion for a stay of proceedings in that suit, pending arbitration, which was made over the vigorous objection of its adversary on many grounds, including its position that it was not a party to any contract containing a valid agreement to arbitrate on any agreement whatsoever upon the subject. That motion did not demand, and the order if it had been entered, would not have required, that Wilson & Company initiate arbitration. The action contemplated was merely the suspension of the prosecution of the suit pending arbitration, presumably upon the initiation of Fremont Company, which, alone, contended for it. Even then, with its right to require arbitration vindicated, it remained silent and inert until the first case here had been dismissed and the *Dodge County, Nebraska,* case had been instituted and pressed for nearly six months, when it started this action. And it need not be asserted that the filing of this case is no substitute for the initiatory steps contractually defined for the setting on foot of arbitration.

"Confronted with that history of inaction, this Court finds that Wilson & Company has not 'failed, neglected or refused to arbitrate,' and is not 'in default' in the performance of any obligation incident to arbitration within the meaning of Title 9, U. S. C. A., section 4; and that Fremont Company is not 'aggrieved' by any default in that behalf on the part of Wilson &

for that reason they could not be considered. It was correct. The State Court even held that defenses because of war and other contingencies could not be considered because the agreement provided for their enforcement by arbitration. Large sections of the contract were not even allowed to be introduced into evidence for this reason. If the right to arbitration as to controversies involving interstate commerce is to be valid, irrevocable and enforceable, it must be given such effect in all of the forty-eight States and not thrown out in Nebraska or other jurisdictions which decide to disregard this Federal statute.

It is not as though Congress has not provided ample safeguards for the courts to review any arbitration award. Title 9, United States Code, covers those problems in detail.[11]

Company. *Nagy* v. *Arcas Brass & Iron Co.*, 242 N. Y. 97, 150 N. E. 614, *Krauss Bros. Lumber Co.* v. *Louis Bossert & Sons* (2 Cir.) 62 F. (2) 1004, *Radiator Specialty Co.* v. *Cannon Mills, supra.*

"The Court is not unmindful of the admission in the pleadings by Wilson & Company that it has refused to arbitrate and a like, though somewhat qualified, stipulation upon the trial. But that 'refusal' must be understood in its proper context. Denying its obligation to arbitrate under its contract, Wilson & Company has not initiated the arbitration process but has refused (or failed or neglected) to participate in arbitration proceedings started by its opponent, for none have been thus started.

"Consideration has been given to the question whether the asserted denial of the obligation to arbitrate relieves Fremont Company of the necessity of taking the initiatory steps in arbitration, if it desires to insist upon its right to that procedure. But the Court holds that the question must be answered negatively. Here the very existence of an agreement for arbitration is in *bona fide* dispute. That the dispute is real and substantial is not altered by the circumstance that the Court has heretofore announced its conclusion that there is such an agreement. Wilson & Company sincerely believes that the Court was mistaken in that ruling. Such being the situation, Fremont Company ought to be required to take the definitive steps setting the arbitration machinery in motion, thus putting Wilson & Company under the necessity of determining whether, on the faith of its legal contention, it should 'fail, neglect or refuse to arbitrate' and thereby enter into 'default' in that respect."

11 Section 3 provides for stay of any court proceeding pending arbitration; Section 4, for an order by the Federal Court compelling arbitration; Section 5, for the appointment of arbitrators; Section 6, for any application to be handled as a motion; Section 7, procedures for handling witnesses before the

In Nebraska the same power to review arbitration awards is recognized.[12]

4. If the Federal Arbitration Act is to be effective, it should be liberally construed to carry out the congressional purpose.[13] It should not be defeated by conduct such as is shown in this case.

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arbitrators; Section 8, for proceedings begun by libel in admiralty and then arbitration; Section 9, for confirmation of the award; Section 10, for vacating the award in any of the following situations: (a) where the award was procured by corruption, fraud, or undue means; (b) where there was evident partiality or corruption in the arbitrators, or either of them; (c) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of other misbehavior by which the rights of any party have been prejudiced; (d) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made; and in (e) a rehearing by the arbitrators at the Court's discretion; Section 11, modification or correction of award upon the following grounds: (a) where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award; (b) where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted; and (c) where the award is imperfect in matter of form not affecting the merits of the controversy; Section 12, notice of motions to vacate or modify and manner of service, stay of proceedings; Section 13, the papers to be filed with order on motions, judgment, force and effect of the judgment and its enforcement; Section 14, that the act should not apply to contracts made prior to January 1, 1926.

12 Fraud, corruption, or misbehavior of the arbitrators is ground for setting aside or impeaching the award. *McDowell* v. *Thomas*, 4 Neb. 542; *Hughes* v. *Sarpy County*, 97 Neb. 90, 149 N. W. 309.

13 *Kulukundis Shipping Co.* v. *Amtorg Trading Corp.*, 126 F. (2d) 978: "The United States Arbitration Act of 1925 was sustained as constitutional, in its application to cases arising in admiralty. *Marine Transit Corp.* v. *Dreyfus*, 1932, 284 U. S. 263, 52 S. Ct. 166, 76 L. Ed. 516. The purpose of that Act was deliberately to alter the judicial atmosphere previously existing. The report of the House Committee states, in part: 'Arbitration agreements are purely matters of contract, and the effect of the bill is simply to make the contracting party live up to his agreement. He can no longer refuse to perform his contract when it becomes disadvantageous to him. An arbitration agreement is placed upon the same footing as other contracts, where it belongs. * * * The need for the law arises from an anachronism of our American law. Some centuries ago, because of the jealousy of the English courts for their own jurisdiction, they refused to enforce specific agreements

Conclusion

The foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

MAXWELL V. BEGHTOL,
J. LEE RANKIN,
Counsel for Petitioner.

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to arbitrate upon the ground that the courts were thereby ousted from their jurisdiction. This jealousy survived for so long a period that the principle became firmly embedded in the English common law and was adopted with it by the American courts. The courts have felt that the precedent was too strongly fixed to be overturned without legislative enactment, although they have frequently criticized the rule and recognized its illogical nature and the injustice which results from it. The bill declares simply that such agreements for arbitration shall be enforced, and provides a procedure in the Federal courts for their enforcement. * * * It is particularly appropriate that the action should be taken at this time when there is so much agitation against the costliness and delays of litigation. These matters, can be largely eliminated by agreements for arbitration, if arbitration agreements are made valid and enforceable.'

"In the light of the clear intention of Congress, it is our obligation to shake off the old judicial hostility to arbitration. Accordingly, in a case like this, involving the Federal Act, we should not follow English or other decisions which have narrowly construed the terms of arbitration agreements or arbitration statutes."

Circuit Judge Frank presents an excellent discussion of the history of the hostility of the courts toward arbitration agreements and rights in this case, which the Court may wish to consider.

Young v. *Eagen, Warden*, 337 U. S. 235: "More than a question of State procedure is involved when a State Court of last resort closes the door to any consideration of a claim of denial of a Federal right."

APPENDIX A

Title 28, U. S. C. A., Sec. 1257, Par. (3)

Sec. 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * * * * * *

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

Title 9, U. S. C. A., Sec. 1

Sec. 1. "Maritime transactions" and "commerce" defined; exceptions to operation of title

"Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce. July 30, 1947, c. 392, Sec. 1, 61 Stat. 669.

Sec. 2. Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. July 30, 1947, c. 392, Sec. 1, 61 Stat. 669.

APPENDIX B

WILSON & COMPANY, INC., A CORPORATION, *Appellee,*

v.

FREMONT CAKE & MEAL COMPANY, A CORPORATION, *Appellant*

43 N. W. 2d 657

Filed July 24, 1950. No. 32745

1. Trial. In determining whether or not a verdict should have been directed by the trial court, the evidence must be considered in the light most favorable to the party against whom the motion was made; that is, every controverted fact must be resolved in his favor and he should have the benefit of every inference that can reasonably be deduced therefrom.

2. Arbitration and Award: Courts. Where arbitration constitutes a part of the contract between parties to it and an attempt is made to enforce arbitration by invoking the Federal Arbitration Act, in the courts of this state the issue is one of procedure and not of substantive right, and the laws of this state are controlling.

3. Arbitration and Award: Contracts. In this jurisdic-

tion a provision in a contract requiring arbitration, whether of disputes arising under the contract generally or only of the amount of any loss or damages sustained by the parties thereto, will not be enforced; nor will refusal to arbitrate be available in an action growing out of the contract.

4. Sales. Where a certain date is fixed as the time limit for delivery of six tank cars of soybean oil by the seller to the purchaser, and by subsequent agreement between the parties in the form of correspondence the time limit date for delivery is postponed, such agreement does not discharge the original contract, but the same remains in full force, changed only to the extent that delivery is postponed.

5. Contracts. If a party by his contract creates a duty or imposes a charge upon himself, he must under any and all conditions substantially comply with the undertaking.

6. ————. Inconvenience or the cost of compliance, though they might make compliance a hardship, cannot excuse a party from the performance of an absolute and unqualified undertaking to do a thing that is possible and lawful.

7. ————. A contract is not invalid, nor is the obligor therein in any manner discharged from its binding effect, because it turns out to be difficult or burdensome to perform.

8. Contracts: Sales. An abnormal rise in the price of soybean products due to war or unusual trade conditions, so that the processor thereof cannot perform a contract to process and deliver the same to a contractee without greater expense than anticipated, is not an impossibility excusing performance.

9. Sales: Damages. The measure of damages is the difference in the contract price of the merchandise and the market value of the same at the time to which delivery is postponed. If delivery is postponed by agreement of the parties, the market value at the time to which delivery is postponed is taken as the criterion.

Appeal from the district court for Dodge County: Russell A. Robinson, Judge. Affirmed.

Beghtol & Rankin, Sidner, Lee & Gunderson, Kenneth

E. Anderson, Nate C. Holman, George E. Svoboda, and John C. Mason, for appellant.

Kennedy, Holland, DeLacy & Svoboda, Louis R. Simpson, and Spear, Lamme & Flory, for appellee.

Heard before Simmons, C. J., Carter, Messmore, Yeager, Chappell, Wenke, and Boslaugh, JJ.

Messmore, J.

This is an action at law brought by the plaintiff, Wilson & Company, a corporation, against the Fremont Cake & Meal Company, a corporation, to recover damages for the alleged breach of contract for the sale and delivery of soybean oil to the plaintiff. At the close of all the evidence the plaintiff moved for a directed verdict. This motion was sustained. From the overruling of defendant's motion for a new trial and entry of judgment on the verdict in the amount of $41,175 and costs, the defendant perfected appeal to this court.

For convenience we will refer to the appellant, Fremont Cake & Meal Company, a corporation, as the Fremont company, and to the appellee, Wilson & Company, corporation, as Wilson & Company. The Commodity Credit Corporation, Washington, D. C., a corporate agency of the United States government, will be referred to as the CCC, and the Office of Price Administration, an agency of the United States government, as the OPA.

We review the record with the following rule in mind: "In determining whether or not a verdict should have been directed by the trial court, the evidence must be considered in the light most favorable to the party against whom the motion was made; that is, every controverted fact must be resolved in his favor and he should have the benefit of every inference that can reasonably be deduced therefrom." Thoren v. Myers, 151 Neb. 453, 37 N. W. 2d 725.

The following facts are not in substantial dispute: On August 10, 1945, Wilson & Company entered into a contract identified as No. 3447-W, negotiated by B. E. Forssell, the manager of the refinery department of Wilson & Company, through the Marwood Company, Incorporated, a brokerage concern. The contract was confirmed by B. E. Forssell, and is as follows:

"August 10, 1945 No. 3447-W

Seller; Marr Soybean Processing Company, 130 North Broad Street, Fremont, Nebraska.

Buyer; Wilson and Company, Refinery Department, 4100 South Ashland Avenue, Chicago 9, Illinois.

Gentlemen: We confirm transaction today for your account as follows:

Commodity: Soybean oil.

Quality: Crude.

Quantity: Thirty-six (36) Buyer furnishing tankcars of approximately 61,000 pounds capacity each.

Weight: Certified.

Price: Eleven and three-quarters cents (11¾c) per pound (or O.P.A. ceiling price in effect at time of shipment) f.o.b. Fremont, Nebraska.

Terms: Sight Draft/Bill of Lading attached for amount of invoice, free of exchange to buyer. Weights & quality guaranteed at destination.

Shipment: Time Three (3) tankcars each month October, 1945, through September, 1946. From Fremont, Nebraska.

Other Conditions: Seller warrants that crude soybean oil covered by this contract will be produced from beans acquired in accordance with his processor contract with the CCC, or any other government agency controlling the marketing and crushing of oilseeds during season 1945-46. This contract is subject to any government regulation controlling the movement and allocation of crude soybean oil. Subject to tankcar regulations by ODT.

Rules Brokerage: National Soybean Processors Association.

This confirmation is made in triplicate, one copy being sent to the buyer, one to the seller, and one retained on file in this office.

Marwood Company, Inc., As Brokers only, By Marvin Wood.

Buyer to have privilege of unloading shipments immediately on receipt, seller to be notified by mail of details as to quality and weight adjustment."

On or about September 1, 1945, the Fremont company succeeded to the business of the Marr Soybean Processing Company. The Fremont company, with the consent of Wilson & Company and the Marr Soybean Processing Company, adopted and agreed to carry out the terms of the contract set out, and which will hereinafter be referred to as the contract. The Fremont company, under the terms of the contract, delivered to Wilson & Company 30 tank cars of soybean oil at the price provided for in the contract. When the Fremont company assumed the contract it was obligated to take over contracts to furnish Armour & Company 36 cars of oil, the Interstate Cottonseed Oil Refining Company a minimum of 33 cars, in addition to the 36 cars for Wilson & Company, making the total commitment of 105 cars of oil.

On September 10, 1945, Harry E. Wiysel, manager of the Fremont company, signed for the company the CCC contract. The CCC contract provided: "1. Purchase of Soybeans. The processor shall purchase for his own account, upon the terms and conditions hereinafter specified, soybeans of the 1945 crop, either directly from producers or from others who have paid producers not less than the support prices specified * * * in a total quantity not in excess of the quantity he can process on or before October 10, 1946 (to be determined by multiplying the total daily capacity of the Plant * * *)."

The last delivery was made by the Fremont company on September 24, 1946, leaving six tank cars of soybean oil to be delivered to Wilson & Company, which were never delivered and which constitute the subject matter of the instant case.

The plaintiff's petition alleged that six tank cars of soybean oil remained undelivered under the contract; that by mutual consent the time for delivery of the same was extended so that there could be delivered during the latter part of October 1946, three of the tank cars of soybean oil, and the last three during the latter part of November 1946. Due to the failure of delivery as pleaded, the plaintiff prayed damages in the amount of $43,005, based upon

the failure of the Fremont company to perform the contract.

The defendant's answer, insofar as the same need be considered, alleged in substance that delivery under the contract was to be made from October 1945, through September 1946; the soybean oil to be furnished under the contract was required to be produced according to the Fremont company's contract with the CCC or any other government agency controlling the marketing and crushing of soybeans into oil during the 1946 season which ran from September 10, 1945, to October 10, 1946; that the defendant used all soybeans allowed it under the CCC contract and allocated the oil processed therefrom between the three contracts to which it was committed when it assumed the contract from the Marr company; and that defendant notified plaintiff it would be required under a prior contract, before proceeding with new contracts, to furnish two tank cars of soybean oil. Defendant also alleged that Wilson & Company was advised early in October 1946, that the contract could not be fulfilled because of government regulations controlling the movement and allocation of soybean oil, and its processor's contract; that any default that occurred was on or before October 1, 1946; and further, that Wilson & Company gave no notice of default as required by rule 116 of the Soybean Processors Trading Rules. Defendant also alleged that the terms "Eleven and three-quarters cents (11¾c) per pound (or O.P.A. ceiling in effect at time of shipment) f.o.b. Fremont, Nebraska," were intended and understood by the parties and the industry and interpreted in practice to mean ceiling price now in effect, or ceiling price in effect at the time of delivery, or if no ceiling price, then market price at the time of delivery; and that the Fremont company never at any time after October 1, 1946, offered to ship any soybean oil to Wilson & Company except at the market price at time of delivery.

Wilson & Company is engaged in the packing business, and also refines crude soybean oil into margarine or cooking oil.

We make reference to the documentary evidence only insofar as the same relates to the six tank cars of soybean oil not delivered.

B. E. Forssell testified in behalf of Wilson & Company that on or about the 10th of September 1946, he was in Fremont and contacted Mr. Wiysel, manager of the Fremont company. His purpose was to endeavor to purchase soybean oil for his company. He talked to Wiysel about the scarcity of oil and this contract. Wiysel told him: "We owe you six tanks more than we are shipping this month, but I think by next month we will be Okeh and ship again.'" Forssell said that would be all right, "we have a contract on it and I suppose you will live up to your contract." There was nothing more said by Wiysel.

On October 11, 1946, Wilson & Company wired the Fremont company: "According Our Records We Have Six Tanks Soybean Oil Still Due Us Marwood Contract 3447-W Stop Please Wire When You Plan Load These Remaining Six Tanks Due Give Us Loading Dates As You See Them." On October 14, 1946, the Fremont company wired Wilson & Company: "Expect To Load Three Tanks Last Half October Three Tanks Last Half November Will Advise Loading Dates Later."

This witness testified that he kept familiar with the OPA ceiling prices, and on October 1, 1946, the ceiling price was 11¾ cents per pound for soybean oil, the price when the contract was entered into. There was a very short period during the summer when the ceiling prices were off, but during the interim the price stayed at 11¾ cents per pound. The OPA was put back on with the same ceiling price. On October 1, 1946, an order of the OPA made the ceiling price 13½ cents per pound for soybean oil. One delivery on this contract was made between October 1 and October 16, 1946. It was shipped in September. The ceiling price on the day of the last shipment was 11¾ cents per pound. The latter part of October and November 1946, when the Fremont company, by its telegram of October 14, 1946, stated it expected to load three tanks the last part of October and three tanks the last half of Novem-

ber, the ceiling price at that time was 13½ cents per pound. On October 16, 1946, the ceiling price was withdrawn.

On November 1, 1946, Wilson & Company wired the Fremont company, "Your Wire Oct. 14th Advising Expect To Load Three Tanks Soybean Oil Last Half October Three Tanks November When Will You Want These Empty Tanks For Loading Wire Reply." On November 2, 1946, the Fremont company wired Wilson & Company: "Retel Will Not Have Oil To Ship Until Late November Will Contact You When Can Ship And Set Price On Oil." This last telegram received from the Fremont company by Wilson & Company was the first indication that there would be any other price than the contract price charged for the soybean oil.

On November 5, 1946, this witness received a long distance telephone call from Wiysel wherein Wiysel wanted to make an adjustment as to prices on the six cars that had not been delivered. He was informed that there was no adjustment, as the price was on the contract, 11¾ cents per pound.

On November 15, 1946, this witness wrote the Fremont company referring to the telephone conversation with Wiysel, and stated that this oil, on the basis of the contract, was due and coming to Wilson & Company at 11¾ cents per pound, f.o.b. Fremont, inasmuch as this was the last OPA ceiling price in effect.

On November 16, 1946, the Fremont company wired Forssell in Chicago: "Offer To Ship Six Cars Soybean Oil December January If Accepted In Full Satisfaction Of Harwood Contract No. 3447W." On November 16, 1946, Forssell wired the Fremont company in reply to this offer to ship six cars of soybean oil December 1946, and January 1947, and that it was satisfactory to ship same on dates mentioned at 13½ cents per pound in full satisfaction of the contract.

On November 18, 1946, the Fremont company wired Forssell: "Our Wire 16th Offer To Ship Six Cars Predicated On Agreement At Current Oil Market Which We Believe Is 23 Cents." This marked the first time that the Fremont company set a definite figure for the price of the six cars

in controversy, which was the current price on that date. There was a fluctuation of prices after the ceiling was removed, from 20 to 23 cents, and then from 24 to 25 cents the latter part of November 1946. The last day of October the market price was 22 cents.

On November 18, 1946, Forssell wrote the Fremont company making reference to its telegram of November 16th wherein it offered to ship six cars of soybean oil in December and January in full satisfaction of the contract, to which Wilson & Company replied that it would accept the six tanks at 13½ cents per pound, and that they received a telegram from Fremont company offering the six cars at 23 cents per pound. Not to have any misunderstanding, Wilson & Company reiterated the position as outlined in its letter of November 15th, "that on the basis of our contract with you this oil is due and coming to us at 11¾c, per lb., but without waiving any of our rights we would accept these six tanks you offer us for December-January shipment at 13½c per lb. in full satisfaction of this contract." There was no reply received to this letter.

On December 2, 1946, Forssell wired the Fremont company: "No Reply Our Letter November 18th What Can We Expect Six Tanks Soybean Oil Due On Marwood Contract No. 3447-W." December 3, 1946, the Fremont company wired Forssell: "Retel Offer Ship Car Soybean Oil Current Market 25 Cents." On December 3, 1946, the market price of soybean oil was 25 cents per pound.

Harry E. Wiysel, manager for the Fremont company, testified that its factory was located at Fremont, Nebraska, and that it engaged in the processing of soybean oil; that he was familiar with the CCC contract with his company, and the same was referred to in the contract between the Fremont company and Wilson & Company under the language contained therein, "Other Conditions"; and that the CCC contract was the only contract under which the Fremont company operated in the processing of soybeans into crude oil during the season of 1945-1946. In accordance with the CCC contract, the Fremont company went into the market and purchased soybeans at $2.04 per bushel, paid to the grower. The Fremont company sold

the soybeans to the CCC for $2.04 per bushel, and repurchased them from the CCC at 37 cents less a bushel, which constituted the margin of profit to the Fremont company.

The CCC contract provided that the Fremont company (the processor) was privileged to purchase soybeans of the 1945 crop "in a total quantity not in excess of the quantity he (the processor) can process on or before October 10, 1946 (to be determined by multiplying the total daily capacity of the Plant * * *," which is in this instance 2,300 bushels daily, which would entitle the Fremont company to purchase 759,000 bushels. Wiysel further testified that a bushel of soybeans would produce 8½ pounds of oil, or, 6,451,500 pounds of soybeans would be equivalent to 105 2/3 tank cars. At the time the CCC contract was entered into the Fremont company had commitments of 105 tank cars. The Fremont company purchased 691,338 bushels of soybeans under the CCC contract between October 1, 1945, and October 10, 1946, the production was based on 80 percent of the plant's capacity. Assuming that there were 8½ pounds of oil to the bushel, 96 tank cars of oil could be produced. Thirty cars were delivered to Armour & Company, 27 cars to the Interstate Cottonseed Oil Refining Company, and 30 cars to Wilson & Company, or a total of 87 cars. Wiysel further testified that the total production of soybean oil from the 1945 bean crop was 5,588,120 pounds. This would be equivalent to 91½ cars.

The Fremont company's plant was shut down in September, the greater part of October, and in November, 1945, due to inability to procure adequate machinery, steel, and other items necessary to keep the plant in full production.

Wiysel further testified that Wilson & Company never at any time informed the Fremont company it would waive the requirements that any soybean oil sold to it under this contract be produced from beans acquired in accordance with its contract with the CCC or any other government agency controlling the marketing or crushing of oilseeds during the season of 1945-1946, and nothing was said to the Fremont company about waiving the defaults and the delivery of soybean oil in October 1945, and April and

May 1946. He testified that he kept advised of the OPA ceiling prices in effect from time to time, and that after October 16, 1946, the ceiling was unlimited; it was the market price. He related his conversation with Forssell in September 1946, where matters were discussed about the contract, and wherein he related to Forssell the difficulties he had during the past year, previous to September 1946, to the effect that one large expeller was on order, that delivery was promised in time to commence operation on the 1945-1946 crop, that delivery was not made until October 1, and the plant was not in operation until the end of October. He also explained to Forssell the difficulties in obtaining repairs for the other expellers. One expeller was down for six weeks and another a like period of time in December and January, and they were unable to obtain repairs due to war conditions. He further explained to Forssell that the Fremont company had other contracts that were to be filled, and that the Fremont company carried the contracts making delivery on a pro rata basis, month by month. Forssell said nothing with reference to that matter, and indicated he would accept the oil at a later date. Wiysel testified that the Fremont company was agreeable to shipping the remaining six cars of oil at a later date at the maximum permitted under the OPA.

The Fremont company asserts the contract is subject to the rules of the National Soybean Processors Association which appear in the Year Book and Trading Rules of the National Soybean Processors Association. Rule 115 contained therein deals with arbitration. Rule 116 deals with contingencies, and specifically refers to war. We will discuss this rule later in the opinion. In addition, rules for arbitration of the American Arbitration Association are also pertinent to the contract, and the Fremont company asserts that the refusal of the trial court to admit into evidence all of such rules relating to arbitration constitutes prejudicial error. Further, the United States Arbitration Act, Title 9, U. S. C. A., sections 2, 3, and 4, are applicable and should be enforced in the state courts, and the failure of the trial court to so do constitutes prejudicial error.

In this act it is provided that a written provision in any contract involving commerce to settle by arbitration an existing controversy arising out of such contract shall be valid and enforceable. By section 3 it is provided that if any suit or proceeding be brought in any court of the United States upon any issue referable to arbitration, the court in which the suit is pending, shall, on application of one of the parties stay the trial until such arbitration has been had, provided the applicant for the stay is not in default in proceedings in such arbitration.

Section 4 provides in part as follows: "A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any court of the United States which, save for such agreement, would have jurisdiction under the judicial code at law, in equity, or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement."

The proper legal steps were taken by the Fremont company to present to the district court for Dodge County the question as to whether or not arbitration should be invoked by the trial court in the instant case. The trial court ruled against the Fremont company on its contention in such respect.

A brief history of this litigation is appropriate to relate in connection with this assignment of error. On July 11, 1947, Wilson & Company filed suit in the United States District Court for the District of Nebraska, Omaha Division, to recover damages against the Fremont company for alleged breach of contract (the contract involved in the instant case). On August 2, 1947, the Fremont company filed a motion to stay proceedings until arbitration had been had in accordance with Title 9, U. S. C. A., section 3. This motion was sustained. Subsequent proceedings in the federal court hereinafter referred to disclose no order upon the ruling of the court was signed by the parties or presented to the court for approval. See Wilson & Co., Inc. v. Fremont Cake & Meal Co., 77 F. Supp. 364.

On July 19, 1948, Wilson & Company filed a motion to

dismiss its action in the United States District Court. This was before the service or filing of an answer by the Fremont company. This motion was sustained. In sustaining the plaintiff's motion the court said the plaintiff had, perhaps still has, the absolute choice of forums for the recovery of the damages it claims, beyond the possible intervention of the defendant. By plaintiff is meant Wilson & Company, by defendant is meant the Fremont company. That reflection does not enter into the ruling upon the point; but it obviates the suggestion that the procedure that is made mandatory in the federal court is being imposed upon a litigant brought there against its will and thereby deprived of the supposed advantages to it of the state court's traditional usages unaffected by Title 9, U. S. C. A., section 3. See Wilson & Co., Inc. v. Fremont Cake & Meal Co., *supra.*

The instant case was filed by Wilson & Company in the district court for Dodge County on October 29, 1948. The case proceeded to trial in the latter part of September 1949, and judgment was entered on the verdict on September 24, 1949.

On April 8, 1949, the Fremont company filed an original action in the United States District Court for the District of Nebraska, Omaha Division, seeking an affirmative order to require Wilson & Company to submit this controversy to arbitration, as provided for in U. S. C. A., Title 9, section 4. This original action was filed while the instant action was pending and undetermined in the district court for Dodge County, Nebraska. The United States District Court dismissed the Fremont company's original action filed therein on October 8, 1949, holding that the Fremont company not only had taken none of the explicitly defined steps to institute arbitration, but that its course in the entire controversy had been dilatory and obstructive only. Despite the early threats of Wilson & Company in two letters to invoke the arbitration clause of the contract, it remained silent on the question touching arbitration and did not itself initiate the process or even assent to Wilson & Company's suggestion of its liability. See

Wilson & Co., Inc. v. Fremont Cake & Meal Co., 83 F. Supp. 900.

This case was appealed to the United States Court of Appeals, 8th Circuit, and on June 27, 1950, an opinion was rendered by that court wherein the United States District Court was affirmed. There is no occasion to quote from the opinion, except to say that the Circuit Court stated the state court obtained jurisdiction of the controversy between Wilson & Company and the Fremont company long prior to the commencement of the present proceeding. "A conflict of jurisdiction is always to be avoided if possible and it is a general rule that the right of a plaintiff to prosecute his suit in a court having once attached, will not be taken away by proceedings in another court. The decision in this case does not purport to interfere in any respect with the jurisdiction of the State Court but unless it could have such an effect it can not be said to determine any actual substantive controversy between the parties." Fremont Cake & Meal Co. v. Wilson & Co., Inc., 183 F. 2d 60.

In connection with this assignment of error the following authorities of this jurisdiction are applicable.

Whatever distinction may be made elsewhere between arbitration generally and arbitration as to damages only, it is well settled in this state that a provision in a contract requiring arbitration, whether of all disputes arising under contract, or only the amounts of loss or damages sustained by the parties thereto, will not be enforced, and that refusal to arbitrate is not available to the parties in an action growing out of the contract. See, Schrandt v. Young, 62 Neb. 254, 86 N. W. 1085; National Masonic Accident Assn. v. Burr, 44 Neb. 256, 62 N. W. 466; German-American Ins. Co. v. Etherton, 25 Neb. 505, 41 N. W. 406; Rentschler v. Missouri P. R. R. Co., 126 Neb. 493, 253 N. W. 694, 95 A. L. R. 1.

We conclude that the Fremont company's assignment of error here discussed cannot be sustained.

The Fremont company contends a question for the jury was presented by the conflict in the testimony of Forssell and Wiysel regarding the telegrams and correspondence

between them as to whether or not a new contract was made between the parties requiring delivery at an agreed price after September 1946.

The evidence shows that on October 11, 1946, a telegram from Wilson & Company to the Fremont company stated: "According Our Records We Have Six Tanks Soybean Oil Still Due Us Marwood Contract 3447-W Stop Please Wire When You Plan Load These Remaining Six Tanks Due Give Us Loading Dates As You See Them." The Fremont company's answer dated October 14, 1946, said: "Expect To Load Three Tanks Last Half October Three Tanks Last Half November Will Advise Loading Dates Later." We believe this exchange of telegrams constituted the terms of an extension agreement. It may be noted also that on November 16, 1946, the Fremont company offered to ship six cars of soybean oil in December and January, if accepted in full satisfaction of the Marwood contract, which was accepted by Wilson & Company.

There is an exchange of telegrams between Wilson & Company and the Fremont company with reference to the acceptance of the six tank cars of oil in December 1946, and January 1947, at 13½ cents per pound, which occurred after the Fremont company refused to deliver at the contract price. These telegrams show that in order to get the oil, Wilson & Company not only agreed to a future delivery, but to an increase in price to meet the OPA ceiling price in effect October 16, 1946.

Where a certain date is fixed as the time limit for delivery of merchandise by the seller to the purchaser, and by subsequent agreement between the parties in the form of correspondence the time limit date for delivery is postponed, such agreement does not discharge the original contract, but the same remains in full force, changed only to the extent that delivery is postponed. See, Sussman, Wormser & Co. v. Sea Food Co., 127 Miss. 420, 90 So. 116. See, also, Gruner Lumber Co. v. Algonquin Lumber Co., 123 Miss. 157, 85 So. 191; Roberts v. Benjamin, 124 U. S. 64, 8 S. Ct. 393, 31 L. Ed. 334.

There was no new contract made between the parties;

there was merely an extension of time for delivery of the soybean oil.

The Fremont company contends that the trial court erred in denying it a right at the close of the evidence to amend its answer to further develop the defense that it was precluded from performing the contract because of war and conditions resulting therefrom.

This assignment of error is based on the evidence adduced that the Fremont company was unable to procure, due to priorities, the necessary machinery, supplies, and repairs to carry on maximum production of its plant; that the plant was shut down at intervals during the period of the contract so that delivery was impossible to be made under the terms of the contract; and that this condition made so by war developed unforeseen difficulties, and in addition, by soybean shortages and the CCC contractual limitations in procurement of the same. The evidence does not show that the Fremont company was hindered, delayed, or prevented by any act of war from processing and delivering the six tanks of soybean oil in question. The evidence does show that Wilson & Company consented to and acquiesced in each delay of delivery without waiving any of its rights under the contract to delivery of the six tank cars of oil in question. No facts existed when the contract in the instant case was made and assumed by the Fremont company, which made it impossible of performance.

"Inconvenience or the cost of compliance, though they might make compliance a hardship, cannot excuse a party from the performance of an absolute and unqualified undertaking to do a thing that is possible and lawful. Parties sui juris bind themselves by their lawful contracts, and courts cannot alter them because they work a hardship. The rights of the parties must be measured by the contract which they themselves made. A contract is not invalid, nor is the obligor therein in any manner discharged from its binding effect, because it turns out to be difficult or burdensome to perform. It has been said that difficulties, even if unforeseen and however great, are no excuse, and that the fact that a contract has become more burden-

some in its operation than was anticipated is not ground for its rescission." 12 Am. Jur., Contracts, § 362, p. 928.

"Contract obligations are not generally within the rule that a person will be absolved from nonperformance of an obligation or a duty imposed on him by law if performance is rendered impossible without his fault by an act of God or an unavoidable accident. * * * A more general rule which is well settled, though subject to exceptions, is that supervening impossibility is not an excuse for nonperformance of an act promised. A contract which is possible of performance when made does not become invalid or unenforceable because conditions afterwards arise which render performance impossible. * * * If a party by his own contract creates a duty or imposes a charge on himself, he must under any and all conditions substantially comply with the undertaking." 12 Am. Jur., Contracts, § 363, p. 930. See, also, Columbus Ry. L. & P. Co. v. Columbus, 249 U. S. 399, 39 S. Ct. 349, 63 L. Ed. 699, 6 A. L. R. 1648; Cameron-Hawn Realty Co. v. Albany, 207 N. Y. 377, 101 N. E. 162, 49 L. R. A. N. S. 922.

In the absence of a statute to the contrary, conditions arising from a state of war in which this country is engaged will not ordinarily constitute an excuse for nonperformance of contract. See 17 C. J. S., Contracts, § 463, p. 953. See, also, J. C. Lysle Milling Co. v. Sharp (Mo. App.), 207 S. W. 72; Ingram Day Lumber Co. v. Kola Lumber Co., 122 Miss. 632, 84 So. 693.

As stated in Porto Rico Sugar Co. v. Lorenzo, 222 U. S. 481, 32 S. Ct. 133, 56 L. Ed. 277: "A part of the delay seems to have been caused by the repeated breaking down of the machinery, but nothing appears to take the case out of the ordinary rule that performance of an absolute undertaking is not excused by facts of that sort." See, also, Sunseri v. Garcia & Maggini Co., 298 Pa. 249, 148 A. 81, 67 A. L. R. 1428.

Some contention is made by the Fremont company that rule 116 of the Trading Rules 1945-1946, National Soybean Processors Association, which constitutes a part of the contract, governs. This rule deals with contingencies and does mention: "If in consequence of any act of God,

fire, flood, wind, explosion, war, * * * an act of government, * * * the Seller may be unable to ship or the Buyer unable to receive, * * *," then provides a course of procedure to invoke the rule. The contention is that Wilson & Company failed to abide by or avail itself of this rule. The rule was not admitted into evidence. The trial court rejected rule 116 on the ground that it was tied into the arbitration feature of the contract. The rule also provided that on failure of the parties to agree that the contingency "has or will delay the execution of the contract, then the matter shall be arbitrated in accordance with Rule 115 of these Trading Rules * * *."

We have heretofore expressed the inapplicability of the rules with reference to arbitration in the instant case.

We conclude that the trial court did not abuse its discretion in denying the Fremont company the right to amend its answer, as contended for by it.

The Fremont company further contends that the trial court erred in not admitting all of the correspondence between the parties, citing section 25-1215, R. R. S. 1943, as follows: "When part of an act, declaration, conversation or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other. When a letter is read, all other letters on the same subject between the same parties may be given. When a detached act, declaration, conversation or writing is given in evidence, any other act, declaration or writing which is necessary to make it fully understood, or to explain the same, may also be given in evidence.' It cites also, Jensen v. Romigh, 133 Neb. 71, 274 N. W. 199; Culver v. Union P. R. R. Co., 112 Neb. 441, 199 N. W. 794; Roeder v. State, 119 Neb. 116, 227 N. W. 446.

This assignment of error involves certain correspondence between Wilson & Company and one Mr. Eighmy, connected with a firm processing soybean oil which had no connection with the Fremont company. This correspondence was to the effect that Wilson & Company desired Eighmy to use his best offices to persuade the Fremont company to abide by the terms of its contract with Wilson & Company. Eighmy's reply was to the effect that

Wilson & Company should not be favored in such respect, and should pay the market price for soybean oil. We are unable to discern in what manner this correspondence could affect any issue in this case. No prejudicial error resulted to the Fremont company by the rejection of this evidence.

The balance of the evidence upon which the Fremont company predicates error by the trial court not admitting the same, relates to correspondence by Wilson & Company through its counsel and representatives, relating to invoking arbitration against the Fremont company, also the refusal of the trial court in not admitting in evidence the entire complaint filed by the Fremont company in the federal court, after Wilson & Company introduced a part thereof as admissions against interest. The part of the complaint the Fremont company desired in evidence dealt with arbitration. Suffice it is to say, the arbitration feature of the contract is not here involved. The trial court did not commit prejudicial error in rejecting this evidence.

The Fremont company contends the jury should have been permitted to decide whether or not, under the peculiar condition existing at the time the contract was made, the parties intended the price to be 11¾ cents in any event unless the OPA fixed a different price, or whether it was the intention to recite the OPA price then in effect and prescribe a third person, to wit the OPA, to fix the price. If the latter was the case, then the failure of the OPA to fix any price after October 16, 1946, would discharge both parties from any liability under the contract. The Fremont company cites section 69-410, R. S. 1943. The contract is plain. It provided for 11¾ cents per pound unless the OPA raised the ceiling above that figure, and then it would be the ceiling price fixed by the OPA. In the absence of a ceiling price fixed by the OPA, the contract price is just what the contract provided, 11¾ cents per pound.

Forssell testified that the OPA ceiling was removed October 16, 1946. The evidence is that the OPA eliminated all control of soybeans. There was no ceiling price there-

after. The seller could sell at the market price, above the market price, or below the market price. There were no restrictions, and no reason why a jury should pass upon the question as contended for by the Fremont company. The Fremont company was obligated and required to fulfill its contractual obligation to Wilson & Company separate and apart from any contract with the CCC which it voluntarily entered into. In this connection there is no doubt that the Wilson & Company contract could have been fulfilled by the Fremont company. They were permitted to purchase enough soybeans under the CCC contract to fulfill this contract. There was no reason for Wilson & Company to be required to prorate with any other commitments held by the Fremont company when they took over the Marr company obligations.

The measure of damages, where the delivery date within which delivery must be made has been postponed by the parties, is the difference between the contract price of the goods and their market value at such postponed date of delivery. See Sussman, Wormser & Co. v. Sea Food Co., *supra.*

The measure of damages in this case is the difference in the contract price of the six tank cars of soybean oil in question and the market value of the same at the time to which delivery is postponed. If delivery is postponed by agreement of the parties, the market value at the time to which delivery is postponed is taken as the criterion. See, Summers v. Hibbard, 153 Ill. 102, 38 N. E. 899, 46 Am. S. R. 872; Crescent City Mfg. Co. v. Slattery, 132 La. 917, 61 So. 870; Covington Mfg. Co. v. Ferguson, 204 Ala. 192, 85 So. 726; Loy v. Storz Electric Refrigeration Co., 122 Neb. 357, 240 N. W. 423.

An abnormal rise in the price of goods due to unusual trade conditions, such that a producer cannot perform his contract to fill his order without greater expense than anticipated, is not within the provisions of the contract relieving him from liability in case of unavoidable accidents, wars, strikes, fires, labor trouble, or other delays. See Farmers Fertilizer Co. v. Lillie, 18 F. 2d 197, 52 A. L. R.

552. See, also, Wickham & B. Coal Co. v. Minnesota Coal Co., 7 F. 2d 873.

The evidence discloses that there was no dispute between the parties as to what the market price was on any given date after the ceiling was eliminated.

Where the defendant had defaulted on its contract to deliver equal monthly installments of merchandise and such requirement had been waived by plaintiff's acquiescence, the defendant had no right to insist that plaintiff's damages for breach should be measured by the market price in the months preceding the final breach of the contract, the market price of such merchandise having increased after the final breach. See Brevard Tannin Co. v. J. F. Mosser Co., 288 F. 725.

Other assignments of error need not be discussed.

For the reasons herein given, the judgment entered by the trial court on the verdict is sustained.

Affirmed.

Chappell, J., dissents.

YEAR BOOK
and
TRADING RULES
1945-1946

National Soybean Processors Association

YEAR BOOK

1945-1946

(Association Year)

National Soybean Processors Association

Constitution and By-Laws, Code of Ethics, Officers, Directors, List of Standing Committees, Names of Members, Trading Rules, etc.

Official Copy

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CONSTITUTION AND BY-LAWS
(As amended Sept. 22, 1944)

ARTICLE I

Title and Object

Title

Section 1. This organization shall be known as the National Soybean Processors Association.

Object

Section 2-a. To strengthen the character of its members and inculcate in them those principles so essential in the discharge of the duties of the individuals as members of society.

Section 2-b. To promote the welfare of its members and to foster and encourage the exchange of such information as may be considered lawful in order that the consuming public may profit from economies effected.

Section 2-c. To seek to remove the attendant evils and trade customs contrary to sound business principles and highest standard of ethics and to formulate constructive policies for the cooperation of its members as a means of eliminating grievances by fair and equitable adjustment.

Section 3. The Association shall not directly or indirectly restrict free and lawful competition.

ARTICLE II

Membership

Section 1. Any individual, firm or corporation regularly engaged in the actual processing of Soybeans or any association or group representing firms or corporations regularly engaged in the actual processing of Soybeans for the manufacture of Soybean Oil Meal and Soybean Oil may become a regular Member of this Association, upon the approval of the Board of Directors and by complying with the Constitution and By-Laws of this Association, and subscribing to the Code of Ethics.

Special Associate Members

Section 2-a. An individual who may have rendered meritorious service in the Soybean industry may become a Special Associate Member upon approval of the Board of Directors.

Section 2-b. A Special Associate Member shall not be entitled to a vote, or to hold office, but may otherwise participate in the affairs of the Association by serving on standing or special committees, when and if appointed by the President to render such service.

Application For Membership

Section 3. Applications for Membership shall be referred to the President who shall submit them at once to the Board of Directors of this Association. If the vote of the Board of Directors is favorable, the President shall notify the applicant, and applicant shall be enrolled in the Membership of this Association.

Section 4. The Board of Directors may terminate the Membership of any Member whose conduct or Code of Ethics is inimical to this Association.

ARTICLE III

Board of Directors

Section 1. The management of the affairs of this Association, including the determination of the voting rights of affiliated Members, shall be vested in a Board of Directors, the number of which is to be specified by the By-Laws of this Association. Directors to fill vacancies on the Board of Directors shall be elected by this Association at its Annual Meeting from its regular Members, as the last order of business. They shall take office immediately following the Annual Meeting and shall serve for three years. In case of death or resignation of a Member of the Board of Directors, the Executive Committee shall appoint a Director from the regular Membership to serve for the remainder of the unexpired term.

Section 2. Only one representative of a firm, corporation, association or group holding Membership in this Association may serve on the Board of Directors at the same time.

Officers

Section 3. The Officers of this Association shall be composed of the President, Vice President, Secretary, Treasurer and Assistant Treasurer. The President shall preside at all meetings of the Membership, Board of Directors and the Executive Committee. In the absence of the President, the Vice President shall preside and in the absence of both the President and the Vice President, the Secretary shall preside. The Vice President shall serve as Chairman of the Executive Committee, and in his absence the Secretary shall serve as Chairman of the Executive Committee. In case of death or resignation of an Officer, the Board of Directors shall fill such office for the remainder of the unexpired term.

Section 4. The Officers of this Association shall be selected for one year by the Board of Directors, at a meeting immediately following the Annual Meeting of the Association.

Section 5. Only one representative of a firm, corporation, association or group holding regular Membership in this Association may hold office at the same time.

Executive Committtee

Section 6. The Executive Committee shall be composed of the President, Vice President, Secretary and Treasurer and four (4) other Directors, elected by the Board of Directors at its meeting immediately following the Annual Meeting. In the case of death or resignation of a Member of the Executive Committee, the Board of Directors shall fill such office for the remainder of the unexpired term. The Vice President shall serve as Chairman of the Executive Committee and in his absence the Secretary shall so serve.

Section 7. Only one representative of a firm, corporation, association or group holding Membership in this Association may serve on the Executive Committee at the same time.

ARTICLE IV

Duties of Officers

Section 1. Duties of the President: It shall be the duty of the President to call all meetings of this Association except the Annual Meeting which is provided for in Section 1 of Article VII of this Constitution. He shall appoint such committees and fill vacancies upon such committees as are provided under the Constitution and By-Laws of the Association. He shall be an ex-officio member of all committees. He shall carry on the general business management of the Association and shall perform such other executive duties as the Board of Directors of the Association may direct.

Section 2. Duties of the Vice President: The Vice President shall perform all duties of the President in his absence and such other duties as may be assigned to him by the Board of Directors or the Executive Committee. He shall approve all expenditures as authorized by the Board of Directors and/or the Executive Committee. He shall preside at all meetings of the Board of Directors and Executive Committee of this Association in the absence of the President.

Section 3. Duties of the Secretary: It shall be the duty of the Secretary to keep a record of the proceedings of all meetings of the Association and to perform such other duties incident to his office as may arise. He shall prepare and present a report at the annual meeting covering his work for the year. His report may be combined with or embodied in that of the President. He shall be responsible directly to the Executive Committee. In the absence of both the President and the Vice President, the Secretary shall perform the duties of the President and the Vice President in their absence, and also such duties as may be assigned to him by the Board of Directors and/or the Executive Committee.

Section 4. Duties of the Treasurer: It shall be the duty of the Treasurer to collect all moneys due the Association and pay out such moneys in settlement of just debts of the Association under direction and authority of the Vice President and Chairman of the Executive Committee when and as provided. He shall, at the request of the Executive Committee, provide suitable bond to insure faithful performance of his duties, expense of such bond to be borne by the Association. He shall keep a true and accurate record of all receipts and disbursements and submit an annual report at the annual meeting of the Association. He shall, at the request of the Executive Committee, submit the books of the Association for an audit, expense of such audit to be borne by the Association.

Duties of the Executive Committee

Section 5. The Executive Committee shall act as the Executive Body for the Association under the direction and authority of the Board of Directors. It shall be the duty of the Executive Committee to approve the expenditure of moneys available for current operating expenses and to confer on regular or special committees authority to

expend such funds as may have been set aside or collected for their specific use. The Executive Committee shall direct the President in all Association matters, acting in behalf of the Board of Directors.

Duties of the Board of Directors

Section 6. The Board of Directors shall act as the governing body in all matters of administration and policy for the Association. It shall direct the Executive Committee, which will act as Executive Body for the Board in the interim between Board meetings.

ARTICLE V

Initiation Fee and Dues

Section 1. The initiation fee for each individual, firm, corporation, association or group Member shall be fixed by the Board of Directors. Check for this amount should be made payable to this Association and be attached to application for Membership.

Section 2. The Executive Committee shall make recommendation to the Board of Directors as to annual dues. The annual dues for each individual, firm, corporation, association or group Member shall be determined by the Board of Directors from year to year and shall be paid in the manner prescribed.

Section 3. A Member individual, firm, corporation, association or group paying its initiation fee and annual dues shall be entitled to have several Members participate in the work of this Association, yet shall be entitled to only one vote, per Section 6 of Article VII. Members, who in the opinion of the Board of Directors, maintain a common affiliation shall be so designated and such group shall have only one vote.

Section 4. Special dues and assessments for specific purposes may be provided for at an annual meeting or a general meeting called for that purpose when recommended by the Executive Committee.

Section 5. Any regular Member failing to pay the annual dues as provided in Section 2 of this Article or any special assessment shall not be entitled to vote at any meetings of this Association and such failure to pay shall be considered equivalent to resignation.

Section 6. There shall be no initiation fee, dues or special assessments of any kind for Special Associate Members.

ARTICLE VI

Fiscal Year

Section 1. The fiscal year shall run from October 1 to September 30.

ARTICLE VII

Meetings

Section 1. The Annual Meeting shall be held at a date selected by the President, approved by the Board of Directors, or otherwise as directed.

Section 2. The President, or the Executive Committee, shall call all meetings of the Association (except the annual meeting as provided for in Section 1 of this Article) as and when they are deemed advisable, to transact matters requiring prompt action, fixing the exact time and place of all meetings and making all arrangements for same.

Section 3. The President or Vice President or, in their absence, the Secretary may call a meeting of the Board of Directors as often as necessary. The President or Vice President or, in their absence, the Secretary may call a meeting of the Executive Committee as often as necessary to take care of matters in the interim between meetings of the Board of Directors. Notice of all stated or special meetings of this Association shall be mailed to each participating Member at least one week prior to the date of such meeting.

Section 4. Quorum: A majority of the Directors shall constitute a quorum at all Directors' Meetings of this Association; a majority shall constitute a quorum for all meetings of the Executive Committee of this Association.

Section 5. Representation at Meetings: Any individual, firm, corporation, association or group holding regular Membership in this Association may be represented at Annual Meetings of this Association by one or more representatives, but only one representative shall be entitled to vote on the same question.

Section 6. Each individual, firm, corporation, association or group holding regular Membership in this Association shall designate the Member of such organization, firm, corporation, association or group who is to vote at stated or special meetings by sending a letter to the Central Office in advance of such meeting.

ARTICLE VIII

Voting by Mail

Section 1. Executive Committee: When necessary, the Executive Committee shall vote by mail on questions presented by the President or Vice President or, in their absence, by the Secretary, and a majority of the votes received within five (5) days shall be decisive, providing a majority of the Executive Committee Members have voted.

Board of Directors: When necessary, the Board of Directors shall vote by mail on questions presented by the President or Vice President or, in their absence, by the Secretary, and the majority of the votes received within five (5) days shall be decisive, providing a majority of the Directors have voted.

Section 2. Members: Questions which in the judgment of the Board of Directors or Executive Committee are of sufficient importance for the consideration of this Association, and are not important enough for a special meeting of this Association, may be voted upon by mail, and a majority of the votes received within fifteen (15) days from the voting Membership of this Association shall be decisive if more than fifty percent of the total Membership have voted.

ARTICLE IX

Committees

Section 1. The President shall appoint annually, at as early a date as possible after the Annual Meeting, the following Standing Committees consisting of not less than five Members.

(a) Oil Trading Rules Committee
(b) Meal Trading Rules Committee
(c) Technical Committee
(d) Traffic and Transportation Committee
(e) Soybean Grades and Contracts Committee
(f) Trade Development Committee
(g) Soybean Research Council
(h) Crop Improvement Committee
(i) Soy Flour Committee
(j) Research Committee
(k) Edible Soybean Committee
(l) Uniform Rules and Standards Committee for Soybean Oil Meal

The President may also appoint such special committees as he may feel necessary as the occasion arises.

The President shall appoint, after receiving the approval of the Board of Directors or the Executive Committee, at least thirty days before the Annual Meeting, a Nominating Committee of six (6) from the Membership. At least two of this Nominating Committee are to be Members of the present Board of Directors and, further, this Nominating Committee shall represent as far as possible the varied and different interests of this Association, with consideration given to geographical locations of the Membership.

Section 2. Function of Committees:

(a) Oil Trading Rules Committee

It shall be the function of this committee to constantly study the Trading Rules of the Association with a view to maintaining fair and equitable conditions for both buyer and seller and when modern commercial practices warrant changes, to promptly make such recommended revisions. It shall also be the function of this committee to interpret the Trading Rules when called upon by any member to do so. Proposed rules, initiated by the Technical Committee or other committee, bearing on transactions in soybean oil shall first be submitted to this committee for consideration and recommendation.

(b) Meal Trading Rules Committee

It shall be the function of this committee to constantly study the Trading Rules of the Association with a view to maintaining fair and equitable conditions for both buyer and seller and when modern commercial practices warrant changes, to promptly make such recommended revisions. It shall also be the function of this committee to interpret the Trading Rules when called upon by any member to do

so. Proposed rules, initiated by the Technical Committee or other committee, bearing on the transactions in soybean oil meal shall first be submitted to this committee for consideration and recommendation.

(c) Technical Committee

It shall be the function of this committee to cooperate with all government standards committees and the various official societies and other agencies in maintaining standards for our products which will afford commercial protection to buyer and seller. As occasion arises, this committee shall also carry on studies with a view to making recommendations to the Trading Rules Committees with respect to any rules or amendments to the rules.

(d) Traffic and Transportation Committee

It shall be the function of this committee to maintain close contact with all rate making bodies, to represent the Association at hearings on proposed changes in freight rates, to keep the Association informed on all rate developments directly or indirectly affecting the soybean industry, to submit briefs and verbal arguments in behalf of the Association and generally to see to it that the interests of the industry as a whole are properly protected.

(e) Soybean Grades and Contracts Committee

It shall be the function of this committee in protecting the interests of the industry to see that fair and just grades are established either by the United States Department of Agriculture or for the several primary markets, keeping in mind that equal protection must be afforded buyer and seller. This committee shall likewise guard the industry against improper grain exchange trading rules and contracts. The committee shall be responsible for such other matters as fair and equitable schedules of discounts for moisture, foreign material and damaged soybeans in excess of maximum amounts allowed for the standard grades.

(f) Trade Development Committee

It shall be the function of this committee to study the major aspects of the industry as a whole, possible future developments, the creation of new channels of consumption for soybean products, and to suggest policies of a broad, constructive character looking to the greater future efficiency and economy of the industry and its relationship to other allied or competitive industries.

(g) Soybean Research Council

The Council shall be made up of scientific men from the various member firms and from whatever outside organization shall be agreed upon by the Executive Committee. The Council shall issue from time to time literature bearing the Council imprint which will be distributed in accordance with instructions by the Executive Committee. The Council shall keep in touch with all research developments in various agricultural colleges and universities and government experiment sta-

tions, shall hold meetings with college groups carrying on research work or desiring information available to the Council. The Council shall meet regularly, shall keep the membership advised of developments and shall submit an annual report covering fully the activities of the year.

(h) Crop Improvement Committee

It shall be the function of this committee to cooperate with the agricultural interests to encourage the growing of soybeans in the United States and to cooperate with the agricultural colleges and experiment stations in developing new strains of soybeans which yield more and better quality oil.

(i) Soy Flour Committee

It shall be the function of this committee to keep the membership informed with respect to the development of the soy flour industry and to make suggestions and recommendations with a view to the enlargement of this branch of the industry.

(j) Research Committee

It shall be the function of this committee to study soybean products, new outlets for soybeans, new types and varieties, new developments in governmental and other research efforts, complete cooperation to be extended to this committee by the membership.

(k) Edible Soybean Committee

It shall be the function of this committee to keep the Association fully informed with respect to the progress made in the development of the edible soybean field.

(l) Uniform Rules and Standards Committee for Soybean Oil Meal

It shall be the function of this Committee to maintain close contact with the Association of American Feed Control Officials. Any proposed changes in existing soybean product definitions or definitions of new soybean products shall be cleared to the membership after consultation with the designated Feed Control official.

Section 3. The Chairman of each committee shall prepare and present a report at the annual meeting covering the progress and scope of the work done for the year, and shall make recommendations for the guidance of their successors.

ARTICLE X

Rules

Section 1. The proceedings of all meetings of this Association and its Executive Committee shall be subject to parliamentary rules as indicated in Roberts' Rules of Order.

ARTICLE XI

Code of Ethics

We, members of the National Soybean Processors Association, mindful that we are engaged in a vocation affording us a distinct opportunity to serve society and to promote and maintain friendly and truthful relations among men, do pledge ourselves:

First: To strive by sincere, intelligent and lawful cooperation to use our best endeavors to elevate the standards of the vocation in which we are engaged and to so conduct our affairs that others in our vocation may find it wise, profitable and conducive to happiness to emulate our example.

Second: To employ workers of high character and dependability, and to provide conditions favorable to their welfare and moral development, and to pay for an honest day's labor an adequate wage consistent with standards of living and services rendered.

Third: To use only high grade materials and to seek by every possible means to know the true value of same in order that misrepresentation, unknowingly, may be avoided. To refrain from using inferior materials or imitation products in order to meet some unusual competitive conditions or for the purpose of returning a larger margin of profit.

Fourth: To observe truth and honesty in all interviews with salesmen and to make no false or misleading statements to secure price revision. To conscientiously comply with terms or payments, according to terms of purchase and to refrain from making unjust and unreasonable claims in an attempt to evade liability under a purchase contract.

Fifth: To compete always with fairness, securing patronage on merit and confidence, rather than by derogatory reference to a competitor or his goods and to abstain at all times from making false or disparaging statements, either written or oral or circulate harmful rumors regarding a competitor's products, financial or personal reputation.

Sixth: To refrain from infringing upon the equal rights of a competitor and unfairly interfering with his business or misappropriating his trade names, or formulae, or by enticing away his employees.

Seventh: To be guided by a spirit of justice, integrity and honor in all our relations with members of the allied trades, realizing that the standard of ethics in our own industry so vitally affects the standards maintained in associated industries. To encourage the allied trades to adopt similar codes and to discourage unfair trade practices in those industries even though such business methods are to our own immediate advantage.

Eighth: To conduct our business in such a manner that we may render a highly satisfactory and economical service to our customers. To know accurately our costs of management, production, and distribution, in order that a fair price may be charged and a reasonable profit assured. To represent our products truthfully at all times in our advertising and our labeling and to adhere to specifications as carefully as is commercially possible. To strive to constantly improve the quality of our products and services and to build an established confidence in the hearts of our patrons.

Ninth: To conscientiously adhere to the rules of conduct herein set forth and to inspire others in our industry to do likewise, believing sincerely that the Golden Rule in business is the only safe guide of conduct conducive to continued satisfaction and happiness.

Tenth: Any violation of this Code shall be referred by the President of the National Soybean Processors Association to the Executive Committee for consideration and action.

ARTICLE XII

Amendments

Section 1. This Constitution may be amended at any annual meeting of the Association, or at any special meeting called for this purpose by a two-thirds vote of voting members present, provided, however, that such amendments be submitted in writing to each member of the Association at least one week prior to the meeting at which action is to be taken.

BY-LAWS

Section 1. The Board of Directors shall consist of eighteen (18) regular members.

Section 2. At the Annual Meeting of this Association held in September, 1944, there shall be elected eighteen Directors divided into three classes: Class one shall be six Directors who shall serve for the ensuing three years; in class two shall be six Directors who shall serve for the ensuing two years, and in class three shall be six Directors who shall serve for the ensuing year.

OFFICERS, DIRECTORS, AND COMMITTEES
of
NATIONAL SOYBEAN PROCESSORS ASSOCIATION
For 1945-46

Chairman of the Board.....Edward J. Dies
President.....R. G. Houghtlin
V. P. Chn. Ex. Com.....D. J. Bunnell
Secretary.....W. L. Shellabarger
Treasurer.....E. F. Johnson
Ass't. Treasurer.....F. G. Duncanson

EXECUTIVE COMMITTEE

D. J. Bunnell, Chairman

H. E. Carpenter — Karl Nolin
Philip S. Duff — E. K. Scheiter
R. G. Houghtlin — W. L. Shellabarger
E. F. Johnson

BOARD OF DIRECTORS

(Term Expiring September, 1946)

H. A. Abbott — H. E. Carpenter — Philip S. Duff
D. J. Bunnell — J. J. Quinlan — P. M. Jarvis

(Term Expiring September, 1947)

J. H. Caldwell — June S. Mitchell — H. R. Schultz
Jasper Giovanna — E. K. Scheiter — P. E. Sprague

(Term Expiring September, 1948)

H. L. Dannen — W. H. Eastman — W. H. Knapp
Roger Drackett — Howard Kellogg, Jr. — Karl Nolin

STANDING COMMITTEES

TRAFFIC AND TRANSPORTATION:

W. C. Newman, *Chairman*.....Archer-Daniels-Midland Co.....Box 839, Minneapolis 2, Minn.
R. V. Craig.....Allied Mills, Inc.....Board of Trade Bldg., Chicago 4, Ill.
W. E. Willey.....The Buckeye Cotton Oil Co.....Cincinnati 1, O.
L. O. Hauskins.....Cargill, Inc.....Cedar Rapids, Ia.
G. D. MacLean.....Central Soya Co., Inc.....Fort Wayne 2, Ind.
Thomas H. Smith.....Clinton Company.....Clinton, Ia.
G. O. Fagan.....The Drackett Company.....Cincinnati 32, O.
Claude D. Couch.....The Glidden Company.....2670 Elston Ave., Chicago 47, Ill.
Harold Woodard.....Pillsbury Feed Mills.....Clinton, Ia.
T. R. Atchison.....Ralston Purina Co.....St. Louis 2, Mo.
C. L. Bruno.....Spencer Kellogg & Sons, Inc.....Box 989, Buffalo 5, N. Y.
T. C. Burwell.....A. E. Staley Mfg. Co.....Decatur, Ill.
G. F. Tally.....Swift & Co.....Union Stock Yards, Chicago 9, Ill.

STANDING COMMITTEES—(Cont'd)

RESEARCH:

Dr. W. L. Burlison, *Chairman*.....University of Illinois.....Urbana, Ill.
Dr. Frank Hasbrouck.....Allied Mills, Inc.....Peoria 1, Ill.
Dr. J. W. Hayward.....Archer-Daniels-Midland Co.....Box 839, Minneapolis 2, Minn.
Dr. R. T. Milner.....Northern Regional Research Laboratory.....Peoria 5, Ill.

TECHNICAL:

Egbert Freyer, *Chairman*.....Spencer Kellogg & Sons, Inc.....389 Ganson St., Buffalo 3, N. Y.
M. M. Durkee, V. *Chairman*.....A. E. Staley Mfg. Co.....Decatur, Ill.
Frank Hasbrouck.....Allied Mills, Inc.....Peoria 1, Ill.
S. O. Sorensen.....Archer-Daniels-Midland Co.....Box 839, Minneapolis 2, Minn.
T. E. Hall.....The Buckeye Cotton Oil Co.....Cincinnati 1, O.
Julius Hendel.....Cargill, Inc.....761 Chamber of Commerce, Minneapolis 15, Minn.
N. F. Kruse.....Central Soya Company, Inc.....Decatur, Ind.
L. A. Spielman.....Durkee Famous Foods.....2670 Elston Ave., Chicago 47, Ill.
Karl Nolin.....Farmers Cooperative Assn.....Ralston, Ia.
Max Albert.....Galesburg Soy Products Co.....Galesburg, Ill.
W. L. Taylor.....General Mills, Inc., Vegetable Oil and Protein Division.....Chamber of Commerce Bldg., Minneapolis 15, Minn.
Lamar Kishlar.....Ralston Purina Co.....St. Louis 2, Mo.
H. S. Mitchell.....Swift & Co.....Union Stock Yards, Chicago 9, Ill.
R. T. Milner.....Northern Regional Research Laboratory.....Peoria 5, Ill.

SOYBEAN GRADES AND CONTRACTS:

F. E. Benson, *Chairman*.....Archer-Daniels-Midland Co.....Box 839, Minneapolis 2, Minn.
H. J. Kapp, V. *Chairman*.....A. E. Staley Mfg. Co.....Decatur, Ill.
J. J. Quinlan.....Allied Mills, Inc.....Board of Trade Bldg., Chicago 4, Ill.
W. W. Hastings.....The Buckeye Cotton Oil Co.....Cincinnati 1, O.
L. O. Hauskins.....Cargill, Inc.....Cedar Rapids, Ia.
Roger Drackett.....The Drackett Co.....Cincinnati 32, O.
J. R. Pentis.....The Glidden Co.....5165 W. Moffat St., Chicago 39, Ill.
W. E. Flumerfelt.....General Mills, Inc., Vegetable Oil and Protein Division.....Belmond, Ia.
D. O. Andreas.....Honeymead Products Co.....Cedar Rapids, Ia.
J. H. Caldwell, Jr.....Hoosier Soybean Mills, Inc.....Marion, Ind.
W. L. Shellabarger.....Shellabarger Soybean Mills.....364-366 Citizens Bldg., Decatur 30, Ill.
H. H. Heeman.....Soya Processing Co.....Wooster, O.
John Clark.....Spencer Kellogg & Sons, Inc.....Decatur, Ill.
E. M. O'Connor.....Soy Bean Processing Co.....Waterloo, Ia.
A. F. Leathers.....Swift & Co.....Des Moines, Ia.
J. H. Brown.....Toledo Soybean Products Co.....Toledo, O.

STANDING COMMITTEES—(Cont'd)

OIL TRADING RULES:

A. C. Hoehne, *Chairman*.....Archer-Daniels-Midland Co.....
.....Box 839, Minneapolis 2, Minn.
D. J. Bunnell, V. *Chairman*.....Central Soya Co., Inc.....
.....Board of Trade Bldg., Chicago 4, Ill.
J. J. Quinlan.....Allied Mills, Inc.....
.....Board of Trade Bldg., Chicago 4, Ill.
Sam Benedict.....The Buckeye Cotton Oil Co.....Cincinnati 1, O.
A. T. Madra.....Cairo Meal & Cake Co.....Cairo, Ill.
E. W. Myers.....Clinton Company.....Clinton, Ia.
G. Norman Bruce.....The Glidden Company.....
.....2670 Elston Ave., Chicago 47, Ill.
Lamar Kishlar.....Ralston Purina Co.....St. Louis 2, Mo.
H. R. Scroggs.....Sioux Soya Co.....Box 357, Sioux City 2, Ia.
L. J. Chase.....Spencer Kellogg & Sons, Inc.....
.....Box 989, Buffalo 5, N. Y.
H. W. Galley.....A. E. Staley Mfg. Co.....Decatur, Ill.
Ralph Wells.....Ralph Wells & Co.....Monmouth, Ill.

MEAL TRADING RULES:

J. E. Johnson, *Chairman*.....Spencer Kellogg & Sons, Inc.....
.....Box 989, Buffalo 5, N. Y.
I. C. Bradley.....Allied Mills, Inc.....Box 388, Taylorville, Ill.
Earl A. Slaymaker.....Archer-Daniels-Midland Co.....
.....Box 839, Minneapolis 2, Minn.
W. H. Knapp.....The Buckeye Cotton Oil Co.....Cincinnati 1, O.
D. J. Bunnell.....Central Soya Company, Inc.....
.....Board of Trade Bldg., Chicago 4, Ill.
Jasper Giovanna.....Decatur Soy Products Co.....Decatur, Ill.
Jos. Sinaiko.....Fairfield Soy Mill.....Fairfield, Ia.
Glenn Davidson.....The Glidden Company.....
.....5165 W. Moffat St., Chicago 39, Ill.
M. R. Eighmy.....Gooch Milling & Elev. Co.....Lincoln, Neb.
J. H. Caldwell.....Ralston Purina Co.....St. Louis 2, Mo.
H. T. Morris.....A. E. Staley Mfg. Co.....Decatur, Ill.
Nelson P. Noble.....Swift & Co.....Box 68, Champaign, Ill.

SOY FLOUR:

W. L. Shellabarger, *Chairman*.....Shellabarger Soybean Mills.....
.....364-366 Citizens Bldg., Decatur 30, Ill.
R. G. Brierley.....Archer-Daniels-Midland Co.....
.....Box 839, Minneapolis 2, Minn.
D. J. Bunnell.....Central Soya Co., Inc.....
.....Board of Trade Bldg., Chicago 4, Ill.
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.....5165 W. Moffat St., Chicago 39, Ill.
H. A. Olendorf.....Spencer Kellogg & Sons, Inc.....Decatur, Ill.
G. H. Walker.....A. E. Staley Mfg. Co.....Decatur, Ill.

STANDING COMMITTEES—(Cont'd)

CROP IMPROVEMENT:

C. Kenneth Shuman, *Chairman*....The Glidden Company.....
.....5165 W. Moffat St., Chicago 39, Ill.
C. F. Marshall.....Allied Mills, Inc.....
.....Board of Trade Bldg., Chicago 4, Ill.
F. E. Benson.....Archer-Daniels-Midland Co.....
.....Box 839, Minneapolis 2, Minn.
W. W. Hastings.....The Buckeye Cotton Oil Co.....Cincinnati 1, O.
D. J. Bunnell.....Central Soya Co., Inc.....
.....Board of Trade Bldg., Chicago 4, Ill.
H. L. Dannen.....Dannen Grain & Milling Co.....
.....Box 429, St. Joseph 1, Mo.
Jasper Giovanna.....Decatur Soy Products Co.....Decatur, Ill.
M. R. Eighmy.....Gooch Milling & Elev. Co.....Lincoln, Neb.
Ted W. Lord.....The Kansas Soybean Mills, Inc.....Emporia, Kans.
H. F. Armstrong.....I. F. Laucks, Inc.....Portsmouth, Va.
W. A. Berge.....Mankato Soybean Products, Inc.....
.....Mankato, Minn.
W. M. O'Bryan.....Owensboro Grain Co.....Owensboro, Ky.
H. R. Schultz.....Pillsbury Feed Mills.....Clinton, Ia.
O. K. Winterringer.....Producers Cooperative Oil Mill.....
.....Box 911, Oklahoma City 1, Okla.
Irving Rosen.....Quincy Soybean Products Co.....Quincy, Ill.
G. H. Banks.....Ralston Purina Co.....Kansas City, Mo.
C. S. Ragan.....The Southern Cotton Oil Co.....Goldsboro, N. C.
B. S. Brooks.....Soy-Rich Products, Inc..... Wichita 4, Kans.
J. E. Johnson.....Spencer Kellogg & Sons, Inc.....
.....Box 989, Buffalo 5, N. Y.
Thomas Longbons.....A. E. Staley Mfg. Co.....Box 670, Painesville, O.
S. D. Hollett.....Swift & Co.....Frankfort, Ind.
Ralph Wells.....Ralph Wells & Co.....Monmouth, Ill.
E. A. Woodard.....Western Soybean Mills.....Sioux Falls, S. Dak.

SOYBEAN RESEARCH COUNCIL:

P. R. Record, *Chairman*.....A. E. Staley Mfg. Co.....Decatur, Ill.
J. E. Hunter.....Allied Mills, Inc.....Peoria 1, Ill.
J. W. Hayward.....Archer-Daniels-Midland Co.....
.....Box 839, Minneapolis 2, Minn.
O. H. Alderks.....The Buckeye Cotton Oil Co.....Cincinnati 1, O.
R. C. Holder.....Central Soya Co., Inc.....Decatur, Ind.
R. A. Boyer.....The Drackett Co.....Cincinnati 32, O.
R. H. Manley.....General Mills, Inc.....Chamber of Commerce
Bldg. .....Minneapolis 15, Minn.
J. L. Gabby.....The Glidden Company.....
.....5165 W. Moffat St., Chicago 39, Ill.
C. G. Harrel.....Pillsbury Flour Mills Co.....Minneapolis, Minn.
Lamar Kishlar.....Ralston Purina Co.....St. Louis 2, Mo.
W. E. Simonsen.....Simonsen Mill-Rendering Plant.....Quimby, Ia.
Egbert Freyer.....Spencer Kellogg & Sons, Inc.....
.....389 Ganson St., Buffalo 3, N. Y.
H. E. Robinson.....Swift & Co.....Union Stock Yards, Chicago 9, Ill.
R. T. Milner.....Northern Regional Research Laboratory.....
.....Peoria 5, Ill.

STANDING COMMITTEES—(Cont'd)

TRADE DEVELOPMENT:

Philip S. Duff — Archer-Daniels-Midland Co., Box 839, Minneapolis 2, Minn.
Shreve M. Archer, *alternate*
J. J. Quinlan — Allied Mills, Inc., Board of Trade Bldg., Chicago 4, Ill.
W. H. Knapp — The Buckeye Cotton Oil Co., Cincinnati 1, O.
W. W. Hastings, *alternate*
Julius Hendel — Cargill, Inc., 761 Chamber of Commerce, Minneapolis 15, Minn.
D. J. Bunnell — Central Soya Co., Inc., Board of Trade Bldg., Chicago 4, Ill.
D. W. McMillen, *alternate* — (Fort Wayne 2, Ind.)
W. H. Eastman — General Mills, Inc., Vegetable Oil and Protein Division, Chamber of Commerce Bldg., Minneapolis 15, Minn.
P. E. Sprague — The Glidden Co., 1396 Union Commerce Bldg., Cleveland 14, O.
Adrian D. Joyce, *alternate*
E. F. Johnson — Ralston Purina Co., St. Louis 2, Mo.
John H. Caldwell, *alternate*
C. E. Butler — Soy Bean Processing Co., Waterloo, Ia.
Howard Kellogg, Jr. — Spencer Kellogg & Sons, Inc., Box 989, Buffalo 5, N. Y.
E. K. Scheiter — A. E. Staley Mfg. Co., Decatur, Ill.

EDIBLE SOYBEAN:

E. D. Funk, Jr., *Chairman* — Funk Bros. Seed Co., Bloomington, Ill.
George M. Strayer — American Soybean Assn., Hudson, Ia.
Howard Roach — American Soybean Assn., Plainfield, Ia.
J. W. Lloyd — University of Illinois, Urbana, Ill.

UNIFORM RULES AND STANDARDS FOR SOYBEAN OIL MEAL:

D. J. Bunnell, *Chairman* — Central Soya Co., Inc., Board of Trade Bldg., Chicago 4, Ill.
J. W. Hayward — Archer-Daniels-Midland Co., Box 839, Minneapolis 2, Minn.
W. H. Knapp — The Buckeye Cotton Oil Co., Cincinnati 1, O.
P. E. Sprague — The Glidden Company, 1396 Union Commerce Bldg., Cleveland 14, O.
C. E. Butler — Soy Bean Processing Co., Waterloo, Ia.
J. E. Johnson — Spencer Kellogg & Sons, Inc., Box 989, Buffalo 5, N. Y.
P. R. Record — A. E. Staley Mfg. Co., Decatur, Ill.

MEMBERS

NATIONAL SOYBEAN PROCESSORS ASSOCIATION

Albers Milling Co.	W. P. Kyle	1060 Stuart Bldg., Seattle 11, Wash.
Allied Mills, Inc.	J. J. Quinlan	Board of Trade Bldg., Chicago 4, Ill.
	P. J. Scherer	Peoria 1, Ill.
	I. C. Bradley	Box 388, Taylorville, Ill.
	Leo T. Murphy	Omaha, Neb.
	F. H. Shelby	Portsmouth, Va.
Archer-Daniels-Midland Co.	P. S. Duff	Box 839, Minneapolis 2, Minn.
	H. L. Wilkins	Minneapolis, Minn.
	G. E. Laugen	Chicago, Ill.
	R. S. White	Decatur, Ill.
	H. C. Hansen	Toledo, O.
The Berea Milling Co.	H. E. Carpenter	Lexington, O.
Big 4 Co-op. Process. Assn.	Merel M. Stientjes	Sheldon, Ia.
The Blanton Mill	G. M. Gibson	3326 N. Wharf, St. Louis 7, Mo.
Boone Valley Co-op. Pro. Co.	Edward Olson	Eagle Grove, Ia.
The Buckeye Cotton Oil Co.	W. H. Knapp	Cincinnati 1, O.
	W. H. Knapp	Louisville, Ky.
	W. H. Knapp	Memphis, Tenn.
Cairo Meal and Cake Co.	A. T. Madra	Cairo, Ill.
Cargill, Inc.	Julius Hendel	761 Chamber of Commerce, Minneapolis 15, Minn.
	Eric Nadel	Springfield, Ill.
	L. O. Hauskins	Cedar Rapids, Ia.
	H. E. Marxhausen	Fort Dodge, Ia.
Central Iowa Bean Mill	Paul K. Klinefelter	Gladbrook, Ia.
Central Soya Company, Inc.	D. J. Bunnell	Board of Trade Bldg., Chicago 4, Ill.
	T. H. Allwein	Gibson City, Ill.
	E. V. McCann	Decatur, Ind.
Clinton Company	E. W. Myers	Clinton, Ia.
Concord Soya Corporation	W. C. Whittecar	Concord, Mich.
Dannen Grain and Milling Co.	H. L. Dannen	Box 429, St. Joseph 1, Mo.
Decatur Soy Products Co.	Jasper Giovanna	Decatur, Ill.
The Delphos Grain and Milling Co.	Floyd E. Hiegel	Delphos, O.
The Drackett Company	Roger Drackett	Cincinnati 32, O.
Elevators and Mills, Inc.	(Mr.) June S. Mitchell	Windfall, Ind.
Fairfield Soy Mill	Jos. Sinaiko	Fairfield, Ia.
Farmers Cooperative Assn.	Karl Nolin	Ralston, Ia.
Farmers Cooperative Co.	C. M. Gregory	Dike, Ia.
Farmers Cooperative Elevator	H. B. Lovig	Martelle, Ia.
Fayette Soy Bean Mill	W. V. Clark	Fayette, Ia.
Fremont Cake and Meal Corp.	Harry E. Weipel	Fremont, Neb.
Funk Bros. Seed Co.	H. A. Abbott	Bloomington, Ill.
Galesburg Soy Products Co.	Max Albert	Galesburg, Ill.
General Mills, Inc., Vegetable Oil and Protein Division	W. H. Eastman	Chamber of Commerce Bldg., Minneapolis 15, Minn.
	W. E. Flumerfelt	Belmond, Ia.
The Glidden Company	P. E. Sprague	1396 Union Commerce Bldg., Cleveland 14, O.
	P. A. Olson	5165 W. Moffat St., Chicago 39, Ill.
Gooch Milling & Elevator Co.	M. R. Eighmy	Lincoln, Neb.
Haynes Soy Products, Inc.	W. V. Hilfiker	Portland, Ind.
Hemphill Soy Products Co.	W. A. Hemphill	Kennett, Mo.
Hiawatha Soybean Mill	A. G. Thomson	Box 263, Hiawatha, Kans.
Holland Pioneer Mills, Inc.	G. A. Holland	Ohio City, O.

MEMBERS—(Cont'd)

Honeymead Products Co.	D. O. Andreas	Cedar Rapids, Ia.
	Steve Burke	Spencer, Ia.
	S. H. Burchfield	Washington, Ia.
Hoosier Soybean Mills, Inc.	J. H. Caldwell, Jr.	Marion, Ind.
Huegely Elevator Co.	J. W. Huegely	Nashville, Ill.
Hulcher Soy Products	Norman E. Hulcher	Virden, Ill.
Iowa Soya Company	H. R. Straight	Redfield, Ia.
Janesville Mills, Inc.	A. Roger Hook	Janesville, Wis.
The Kansas Soya Prod., Inc.	Richard W. Lord	18th and Bayard Ave., Kansas City 3, Kans.
The Kansas Soybean Mills, Inc.	Ted W. Lord	Emporia, Kans.
I. F. Laucks, Inc.	H. F. Armstrong	Portsmouth, Va.
Mankato Soybean Prod., Inc.	W. A. Berge	Mankato, Minn.
Mellott Grain Company	Milford Knowles	Mellott, Ind.
Muscatine Processing Corp.	G. A. Kent	Muscatine, Ia.
North Iowa Co-op. Pro. Assn.	Glenn Pogeler	Manly, Ia.
Old Fort Mills, Inc.	Ralph Kail	Marion, O.
Owensboro Grain Company	William M. O'Bryan	Owensboro, Ky.
Pillsbury Soy Mills	H. R. Schultz	Clinton, Ia.
	H. R. Schultz	Centerville, Ia.
The Procter & Gamble Distributing Co.	W. H. Knapp	Cincinnati 1, O.
Procter & Gamble	W. H. Knapp	Ivorydale, O.
Producers Co-op. Oil Mill	O. K. Winterringer	Box 911, Oklahoma City, Okla.
Quincy Soybean Prod. Co.	Irving Rosen	Quincy, Ill.
Ralston Purina Company	E. F. Johnson	St. Louis 2, Mo.
	G. H. Banks	Kansas City, Mo.
	Ralph Guenther	Lafayette, Ind.
	H. N. Johnson	Iowa Falls, Ia.
	R. H. Dean	Circleville, O.
Shellabarger Soybean Mills	W. L. Shellabarger	364-366 Citizens Bldg., Decatur 30, Ill.
Simonsen Mill-Rendering Plant	W. E. Simonsen	Quimby, Ia.
Sioux Soya Company	H. R. Scroggs	Box 357, Sioux City 2, Ia.
The Southern Cotton Oil Co.	C. S. Ragan	Goldsboro, N. C.
	W. A. Moore	Tarboro, N. C.
Soya Processing Company	H. H. Heeman	Wooster, O.
Soy Bean Processing Company	C. E. Butler	Waterloo, Ia.
Soy-Rich Products, Inc.	B. S. Brooks	1425 N. Mosley Ave., Wichita 4, Kans.
Spencer Kellogg & Sons, Inc.	Howard Kellogg, Jr.	Box 989, Buffalo 5, N. Y.
	Howard Kellogg, Jr.	Chicago, Ill.
	Howard Kellogg, Jr.	Decatur, Ill.
	Howard Kellogg, Jr.	Des Moines, Ia.
A. E. Staley Mfg. Co.	E. K. Scheiter	Decatur, Ill.
	Thos. Longbons	Box 670, Painesville, O.
Swift & Company	P. M. Jarvis	Union Stock Yards, Chicago 9, Ill.
Swift & Company Oil Mill	W. B. Stone	Cairo, Ill.
Swift & Co. Soybean Mill	N. P. Noble	Champaign, Ill.
Swift & Co. Soybean Mill	S. D. Hollett	Frankfort, Ind.
Swift & Co. Soybean Mill	A. F. Leathers	Des Moines, Ia.
Swift & Co. Soybean Mill	H. S. Byrd	Fostoria, O.
Toledo Soybean Products Co.	J. H. Brown	215 Pontiac St., Toledo, O.
Ralph Wells & Co.	Ralph Wells	Monmouth, Ill.
West Bend Elevator Co.	R. W. Jurgens	West Bend, Ia.
Western Soybean Mills	E. A. Woodard	Sioux Falls, S. Dak.
Williams Milling Company	Leo W. Williams	Sac City, Ia.

TRADING RULES

Governing Purchase and Sale

of

SOYBEAN OIL MEAL

Adopted October 18, 1933; Amended February 17, 1939; Amended October 18, 1940; Amended October 13, 1941; Effective October 13, 1941; Amended February 23, 1942; Effective April 1, 1942; Amended September 15, 1943; Effective October 1, 1943; Amended September 22, 1944; Effective September 22, 1944.

RULE 1 — CONTRACTS

Section 1. All sales of Soybean Oil Meal by Members of the Association shall be made under a written contract under the Rules of the Association and shall be signed by both Buyer and Seller.

Contracts shall be signed in duplicate by an officer of each Company, showing official title, or by some one duly authorized to sign contracts for both Buyer and Seller.

Section 2. Uniform Sales Contract. No._____

Contract made at _____ (City) _____, _____ (State) _____, this _____ day of _____, 19_____, between _____ (Seller) _____, of _____ (City) _____ (State) _____, hereinafter called the Seller, and _____ (Buyer) _____ of _____ (City) _____, _____ (State) _____, hereinafter called the Buyer.

The Seller hereby sells and agrees to deliver, and the Buyer hereby purchases and agrees to receive in the amounts and on the terms and conditions hereinafter set forth, the following quantity of SOYBEAN OIL MEAL, _____% PROTEIN:

_____ Tons

Price per Ton { Bags $_____ / Bulk $_____

F. O. B. _____

Terms: Net cash — Sight Draft, Bill of Lading attached.
For shipment in car lots during periods specified below:

		19____ Tons		19____ Tons
Quick	(within 3 days) _____	Jan. _____	July	_____
Immediate	(within 5 days) _____	Feb. _____	Aug.	_____
Prompt	(within 10 days) _____	March _____	Sept.	_____
Within 20 days.....	_____	April _____	Oct.	_____
Within 30 days.....	_____	May _____	Nov.	_____
Within 45 days.....	_____	June _____	Dec.	_____

Agent or Broker _____

This sale is made under the Trading Rules of the National Soybean Processors Association governing purchase and sale of Soybean Oil Meal in effect on date of purchase, which rules are hereby made a part of this contract.

The Buyer hereby acknowledges familiarity with the text of the Trading Rules of the National Soybean Processors Association and Buyer and Seller agree to be bound by the terms and conditions of said Rules.

This document and said Trading Rules contain the entire agreement between the parties hereto.

This contract shall be construed under the laws of the State of

.....

IN WITNESS WHEREOF, the respective parties have signed these presents at.....

(Buyer)..... (Seller).....

By..... By.....

(Title) (Title)

(This contract must be signed in duplicate by an officer of each Company, showing official title, or by some one duly authorized to sign contracts for both Buyer and Seller.)

Original to be signed and returned to Seller. Duplicate for Buyer.

RULE 2— QUALITY

Section 1. The standard of quality shall be Soybean Oil Meal of fair merchantable quality based on the season's production and conforming to standard definitions and standard specifications of the Association, which are herewith made a part of the Trading Rules and which specifications are subject to modification from season to season as conditions may warrant, upon recommendation of the Technical Committee.

Section 2. Standard Definitions.

A. Expeller, Screw Press or Mechanical Press Soybean Chips is the product obtained after expressing part of the oil from soybeans by crushing, cooking and mechanical pressure. 41% Protein Expeller, Screw Press or Mechanical Press Soybean Oil Meal is the product resulting from grinding the above chips.

B. Hydraulic Soybean Oil Cake is the product obtained after expressing part of the oil from soybeans by crushing, cooking, and hydraulic pressure. 41% Protein Hydraulic Soybean Oil Meal is the product resulting from grinding the above cake.

C. Extracted Soybean Flakes is the product obtained after extracting part of the oil from soybeans by crushing, cooking, and the use of solvents. 44% Protein Soybean Oil Meal is the product resulting from grinding the above Flakes.

D. Ground Soybeans is the product obtained by grinding whole soybeans without cooking or removing any of the oil.

Note: This product is sometimes called Soybean Meal, thus confusing it with Soybean Oil Meal.

E. If a name descriptive of the process of manufacture, such as expeller, screw press, hydraulic, or extracted be used, the product must correspond thereto.

Section 3. Standard Specifications.

A. Old Process Expeller or Screw Press Soybean Chips, Old Process Hydraulic Soybean Oil Cake, and Old Process Soybean Oil Meal are products produced by cooking ground soybeans and reducing the oil content of the cooked product by pressure to 6% or less on a commercial basis. Standard Specifications are as follows:

Protein	Minimum	41.0%
Fat	Minimum	3.5%
Carbohydrates — Fiber	Maximum	7.0%
Carbohydrates — N. F. E.	Minimum	29.0%
Moisture (when shipped by Seller)	Maximum	12.5%

B. New Process Extracted Soybean Flakes and New Process Soybean Oil Meal are products produced by cooking ground soybeans and reducing the oil content of the cooked product by the use of solvents to 1% or less on a commercial basis. Standard Specifications are as follows:

Protein	Minimum	44.0%
Fat	Minimum	0.5%
Carbohydrates — Fiber	Maximum	7.0%
Carbohydrates — N. F. E.	Minimum	29.0%
Moisture (when shipped by Seller)	Maximum	12.5%

Section 4. Official Methods of Analysis.

Official testing methods are set forth in an appendix to this volume, pp. 34-37.

Section 5. Unless otherwise adjusted between the parties any soybean oil meal shipment or lot which does not comply with requirements above will be promptly replaced without expense to the buyer except, however, that any shipment or lot testing 13% or less on arrival

at destination, or which seller can show did not contain more than 12.5% moisture when shipped to buyer, shall not be subject to claim or rejection on account of moisture content.

Section 6. In the event that buyer and seller cannot agree as to the quality, on the basis of qualitative determinations, sample shall be submitted to an official chemist of the Association who will make official determinations by the methods described above.

Section 7. A. The Board of Directors shall certify not less than 7 Association Official Chemists whose tenure of office shall be at the pleasure of the Board of Directors, and only those chemists who meet the requirements of this Association and the Referee Board of the American Oil Chemists Society shall be considered.

B. The Board of Directors shall request the Chairman of the Technical Committee to investigate and approve any new laboratory or chemist as to suitability of his equipment and knowledge of the Official Methods and tests required before certification.

C. Upon request of the Board of Directors, the Technical Committee shall check with any or all of the present Official Chemists to make sure that the laboratory is using equipment that will meet the specifications of the tests required and that tests are being conducted in accordance with these rules.

D. The Association has designated as Official Chemists for Meal the following:

Robt. H. Acock, Acock Laboratories, Box 148, Austin, Texas.
Chas. V. Bacon, 117 Liberty St., New York, N. Y.
G. W. Agee, E. R. Barrow, J. R. Mays, Jr., Barrow-Agee Laboratories, Inc., Memphis, Tenn.
P. W. Tompkins, Curtis & Tompkins, Ltd., 236 Front St., San Francisco, Calif.
R. H. Fash, F. B. Porter, The Fort Worth Laboratories, Fort Worth, Texas.
F. R. Robertson, Houston Laboratories, 1206½ Preston Ave., Houston, Texas.
H. M. Bulbrook, Industrial Laboratories, 828½ Taylor St., Fort Worth, Texas.
M. F. Lauro, Produce Exchange Bldg., 2 Broadway, New York, N.Y.
Thos. C. Law., J. D. Evans, Law & Company, Inc., Atlanta, Georgia.
D. C. Pickard, Pickard Testing Laboratories, 2920 Seventh Ave., So., Birmingham, Ala.
R. C. Pope, Pope Testing Laboratories, P. O. Box 903, Dallas 1, Texas.
P. McG. Shuey, Shuey & Company, 115 East Bay St., Savannah, Georgia.
Southwestern Laboratories, Board of Trade Bldg., Kansas City, Mo.
N. C. Hamner, Southwestern Laboratories, Dallas, Tex.
Paul D. Cretien, Texas Testing Laboratories, Inc., 1416 Young St., Dallas, Tex.
E. H. Tenent, Woodson-Tenent Laboratories, Memphis, Tenn.

Section 8. Sales of Soybean Oil Cake and Meal in any shape, size, or grind are subject to all Trading Rules of the Association.

Section 9. Seller shall not be responsible for adaptability of goods for any specific purpose, unless specifically provided for in the contract.

Section 10. Samples for the purpose of establishing the quality of any lot or shipment of Soybean Oil Meal shall be fairly representative of the entire lot and shall be drawn within 24 hours of arrival at destination in the manner specified for sampling grain per Chapter 1, Grain Inspectors Manual, Agricultural Marketing Service, U. S. Department of Agriculture, dated July 1940. Each sample shall consist of at least two pounds and shall be placed at once in an airtight container, sealed and marked for identification.

RULE 3 — QUANTITY

Section 1. Soybean Oil Meal for domestic consumption shall be sold on a net weight basis in tons. The unit of weight is the short ton (2,000 pounds).

Section 2. The contract shall state the specific number of tons sold, and shall be completed by shipping the exact number of tons unless otherwise arranged between Buyer and Seller.

Section 3. A carload shall be forty thousand (40,000) pounds, unless otherwise specified at time of purchase, provided that where rules of carriers lawfully on file with the Interstate Commerce Commission or State Railway Commissions provide for minimum carload weights other than the above, such minimum weights shall constitute a carload within the meaning of this rule.

Section 4. In completing round-lot contracts, Seller shall load cars to "minimum weight" as required by railroad regulations, unless specific instructions to the contrary shall have been given by Buyer, in which case Buyer shall be liable for excess freight.

RULE 4 — PRICE

Section 1. The price on Soybean Oil Meal shall be quoted in U. S. dollars per ton.

Section 2. Unless specifically stated by Seller and mutually agreed upon by Buyer and Seller at time of sale, prices quoted are delivered prices. Seller shall prepay freight on all shipments sold on a delivered price basis. Seller shall also have the option of prepaying freight on shipments sold on an F. O. B. mill basis and add the freight to invoice and draft at the regular published rail tariff rates.

Section 3. Unless otherwise specified at time of sale, prices quoted are for regular fine ground Soybean Oil Meal in new and/or reconditioned 100 pound bags.

Section 4. In the event that Buyer calls for delivery of Soybean Oil Cake or Meal in any shape, size, or grind other than fine ground Meal against a contract written on a regular fine ground meal basis in sacks, Seller's differentials for the respective grades prevailing on date

of sale shall apply in determining the invoice price of the specific delivery made against contract.

Section 5. On contracts made on a delivered price basis, unless otherwise specified in the contract, delivery point specified shall be considered as a rate basis only and not necessarily final destination of goods. If Buyer requests shipment to other points than the delivery point specified in contract, the increase or decrease in freight costs are for account of Buyer, unless otherwise specified in the contract. Freight allowances on sales of Soybean Oil Meal when shipped in bags will be made on a gross weight basis.

Section 6. Any special billing or reference stipulated at time of sale, as a part of the purchase price, shall be shown in contract.

Section 7. Any taxes now or hereafter imposed by the U. S. Federal Authorities or by any state upon the manufacture and/or sale of Soybean Oil Meal are for the account of Buyer.

RULE 5 — TERMS

Section 1. Unless otherwise specified at time of sale, terms of payment on Soybean Oil Meal are to be net cash — sight draft, bill of lading attached.

Section 2. Seller reserves the right to restrict the terms of payment if in his judgment the financial responsibility of the Buyer does not warrant shipment on terms originally stated in contract.

Section 3. Failure to accept delivery of or pay for any portion of specified quantity of Soybean Oil Meal covered by contract shall at Seller's option release Seller from making further deliveries. In case of default in payment of any invoice when due, the whole sum owed by the Buyer shall become due at once.

RULE 6—INQUIRIES, QUOTATIONS AND CONFIRMATIONS

Section 1. All inquiries shall state quantity in tons, kind, grade, time of shipment, shipping point preferred, delivery or rate basing point, and any special billing, reference or routing requested.

Section 2. All quotations shall state quantity in tons, time of shipment, F. O. B. mill or delivered price specifying mill point and/or delivery or rate basing point as requested, minimum per cent protein guaranteed, any special billing, reference or routing if requested, bulk price only if requested.

Section 3. It shall be the duty of both Buyer and Seller, not later than the close of business day following day of sale, to mail, each to the other, a written confirmation or contract (the Buyer a confirmation of purchase and the Seller a confirmation and/or contract of sale),

setting forth the specifications as agreed upon in original articles of trade, however conducted. Upon receipt of said confirmations the parties thereto shall check carefully all specifications stated therein and, upon finding any differences, shall immediately notify the other party to the contract, by wire or telephone, and confirm in writing, except in the case of manifest errors and/or differences of minor character, in which event notice by return mail will suffice.

Section 4. When a trade is made through a commission agent or broker, it shall be the duty of said agent or broker, not later than the close of business day following day of sale, to send a written confirmation to each of the principals (to the Buyer a confirmation of sale and to the Seller a confirmation of purchase), setting forth the specifications of the trade as made for their account. Upon receipt of said confirmations the parties thereto shall carefully check all specifications stated therein and, upon finding any differences, shall immediately notify the other party to the contract by wire or telephone, and confirm in writing. In default of such notice the contract shall be filled in accordance with the terms of the confirmation issued by agent or broker.

RULE 7

TIME OF SHIPMENT — CARRYING CHARGE

Section 1. Unless the exact shipping date is agreed upon by Buyer and Seller at time of sale, shipments for nearby positions shall be interpreted as follows, starting from date shipping instructions are received by Seller:

Quick shipment	— within	3 working days
Immediate shipment	— within	5 working days
Prompt shipment	— within	10 working days

"In transit" shall mean that the bill of lading must be dated at least one day prior to date of sale.

"Loaded, spot, instant or on track" shall mean that the Soybean Oil Meal is actually loaded and ready for billing, and the bill of lading must be dated on the day of sale.

Section 2. On contracts covering specific quantities for shipment during the first half or second half of a given month, it shall be understood that up to midnight of the fifteenth (15th) shall be considered the first half (this including February), the remainder of the month to be considered as second half.

Section 3. On contracts covering specific quantities for shipment during a specified period, shipment is to be made during the month or months specified in the contract with no tolerance period allowed to Buyer.

Section 4. Unless otherwise agreed in the contract, all sales are understood to be for shipment at Seller's option at any time during period specified in contract.

Section 5. Specifications and shipping instructions on sales for "in transit," spot, immediate, and quick shipments must be furnished by Buyer at the time contract is made.

Section 6. Specifications and shipping instructions on sales for prompt shipment must be furnished by Buyer within seven (7) days from date of contract, including Sundays and Holidays.

Section 7. On contracts covering specific quantities for shipment, during a specified period, the Buyer shall furnish specifications and shipping instructions within the first week of the month during which shipment is wanted to enable Seller to execute order within the period or periods specified in contract.

Section 8. In the event that Buyer fails to furnish specifications and shipping instructions within the period or periods specified in contract, the Seller shall have the following discretionary rights, subject, however, to Seller notifying Buyer by wire or mail the day following contract period expiration, notifying Buyer which right Seller elects to exercise under the contract:

(a) To resell Soybean Oil Meal in the open market for Buyer's account, Buyer to pay Seller the loss incurred; or

(b) To retain Soybean Oil Meal, Buyer to pay Seller difference between contract price and market price in the event of market price being lower, and also in addition thereto such actual expense as shall have been incurred; or

(c) To cancel the contract on any unshipped portion thereof; or

(d) To postpone delivery of such past due Soybean Oil Meal and carry same for Buyer subject to a carrying charge of 25 cents per ton for each 15 days or fraction thereof for a period not to exceed 60 days from the expiration of the contract. The carrying charges accruing against each specific shipment shall be added to each invoice and draft by Seller and listed as a separate item showing how each computation is made.

Section 9. In the event that Seller fails to ship any portion of Soybean Oil Meal during contract period, providing specifications and shipping instructions shall have been received in time to execute orders, Buyer shall have the following discretionary rights, subject, however, to Buyer notifying Seller by wire or mail the day following contract period expiration, notifying Seller which right Buyer elects to exercise under the contract:

(a) To cancel that part of the contract upon which there has been default; or

(b) To buy in the open market a like quantity and quality of Soybean Oil Meal for Seller's account, Seller to pay Buyer the loss incurred; or

(c) Seller to pay difference between the contract price and market price, if the market price is higher than the contract price, and in addition, such actual expense as shall have been incurred.

(d) Within 24 hours after Buyer gives due notice, as above provided, of their election to hold Seller for breach of contract, Buyer shall give notice to Seller by letter or telegram which one of the above rights Buyer elects to exercise.

(e) In the event Buyer's notice is not received by Seller before shipment is made, the contract shall be extended so as to include the shipment in question.

Section 10. A change in specifications or shipping instructions previously filed with the Seller does not extend any contract, except upon mutual agreement at the time such change is requested.

Section 11. Failure on the part of Seller to deliver any installment of Soybean Oil Meal or failure on the part of Buyer to furnish specifications and shipping instructions on any installment of Soybean Oil Meal shall not be a breach of the entire contract, or affect any other contracts between Buyer and Seller.

Section 12. The date on the original bill of lading at point of origin shall be considered as the date of shipment.

RULE 8 — WEIGHTS

Section 1. Seller's weights are to govern settlement. No allowance for shortage or damage shall be made by Seller unless Buyer furnishes acknowledgment from railroad that same occurred in transit.

Section 2. It shall be understood that all Soybean Oil Meal packed in 100 pound bags shall be 100 pounds net weight when tendered for shipment. Seller shall not be liable for moisture loss or loss due to sifting and handling in transit.

Section 3. Seller, when so requested by Buyer, shall furnish certified copy of official weights at point of origin on bulk shipments. Official weight certificate when requested shall be furnished as soon as obtainable. Official weights shall be considered when weighing is done by a state weighmaster, Board of Trade, Chamber of Commerce, or other recognized public or sworn weighmaster approved or licensed by the supervising organization. If Seller cannot furnish official weights at point of origin, Buyer shall have the right to have official weights taken at point of destination, which weights shall govern. In no case shall railroad weights be considered as official weights. Cost of obtaining official weights shall be for the account of the Seller.

RULE 9 — FREIGHT RATES

Section 1. Delivered prices specified in any meal contract are based on the published freight rates applicable thereto in effect on date of sale. Any increase or decrease in the said published freight rates that becomes effective after the contract is made is for the account of the Buyer.

RULE 10 — ROUTING

Section 1. Unless contract is drawn on the basis of specific routing, the Seller shall have the right to specify routing excepting delivering carrier, which shall be the option of the Buyer.

RULE 11 — COMMISSION OR BROKERAGE

Section 1. Unless otherwise specifically agreed at time of sale, the Seller shall pay selling commission or brokerage to agent or broker consummating sale.

Section 2. Commission or brokerage shall be credited after delivery has been made unless otherwise specified.

RULE 12 — BILLS OF LADING AND DEMURRAGE

Section 1. Bills of lading attached to drafts shall be original and negotiable and in conformity with the specifications of the contract on which the shipment is to apply, and shall be signed in accordance with the rules of carriers. Any loss resulting from irregular or incorrect bills of lading shall be paid by Seller.

Section 2. The Seller shall be liable for any demurrage, and/or additional expense accruing on cars of Soybean Oil Meal billed to "shipper's order," when such expense can be shown to have accrued by reason of the inability of the Buyer, through act of Seller or agent, to get possession of the bill of lading whenever said bill of lading is necessary to furnish disposition.

RULE 13 — REGISTRATION

Section 1. On sales of Soybean Oil Meal, the Seller guarantees that same shall comply with the laws of the state into which it is sold, including registration and tax, if any, unless otherwise stipulated at time of sale. All tax tags shall be for the account of Buyer.

RULE 14 — ARBITRATION

Section 1. All controversies arising out of contracts made under these Trading Rules or the breach thereof, unless amicably adjusted otherwise, shall be settled by arbitration in accordance with the Rules, then obtaining, of the American Arbitration Association, and judgment upon the award rendered may be entered in the highest court of the forum, state or federal, having jurisdiction.

RULE 15 — CONTINGENCIES

Section 1. If in consequence of any act of God, fire, flood, wind, explosion, war, embargo, civil commotion, sabotage, law, an act of government, or because of labor difficulties, the Seller shall be unable to ship or the Buyer unable to receive, any soybean oil meal to be shipped under a contract existing between them, and if the disabled party delivers notice to the other of that fact within two days and,

further, furnishes proof thereof within five days of receipt of the other's request, provided such request shall be made within a week after receipt of notice of disability, the parties shall have rights and duties as follows:

(1) The disabled party may defer shipments until the disability ceases, but not for more than thirty (30) days next after the disability occurred.

(2) If at the end of the deferred period the parties to the contract have not arrived at an agreement, and a request for arbitration has not been filed by either party, and the disabled party has not delivered notice that the disability has ceased, the party not disabled may cancel the contract, and the difference between the contract price and the market price at the close of business on the day the deferred period terminates shall be paid by the Buyer to the Seller if the market price is lower, and by the Seller to the Buyer if the market price is higher, whether the Seller or Buyer is the disabled party.

(3) If the parties do not agree that the contingency has or will delay the execution of the contract, then the matter shall be arbitrated in accordance with Rule 14 of these Trading Rules by either party filing submission of the matter with the Clerk of the Tribunal of the American Arbitration Association having jurisdiction. If neither party files a submission for the arbitration within sixty (60) days from the date the contingency occurs, both parties shall be barred from recovering damages from the other.

(4) The foregoing rule shall not apply in cases of shipments delivered to a carrier prior to the receipt of notice of the disabling event.

RULE 16 — AMENDMENTS

Section 1. These Trading Rules may be amended by a majority vote of the membership at any regular or special meeting, or by mail vote when authorized by the Board of Directors, providing the Trading Rules Committee shall have first made such recommendation for amendment and a copy of such proposed changes submitted to each member of the Association at the time meeting is called, or if by mail vote in accordance with Section 2 of Article VIII of the Constitution of this Association.

Section 2. All amendments shall become effective immediately upon adoption. The Secretary and all members of the Association shall have such amendments inserted in the blank pages of all copies of Trading Rules remaining in their possession.

RULE 17 — SPECIAL PRODUCTS AND BY-PRODUCTS

Section 1. Sale of special products and by-products are subject to all the Trading Rules of the Association, except as to quality under Rule 2.

Section 2. Blended Soybean Oil Meal Pellets or Cubes are produced by combining soybean oil meal of two or more types and compressing into pellets or cubes. Standard specifications are as follow:

Protein	Minimum	41.0%	(1)
Fat	Minimum	0.5%	(1)
Carbohydrates (Fibre	Maximum	7.0%	
(N. F. E.	Minimum	29.0%	
Moisture (when shipped by Seller)	Maximum	12.5%	

(1) Minimum combined fat and protein 44.0%, any deficiency to be considered on the same basis as applied on protein deficiency.

Appendix to Trading Rules on Soybean Oil Meal

OFFICIAL METHODS OF ANALYSIS

Testing Methods as adopted by the Association of Official Agricultural Chemists shall be used as the official methods of analysis, except as otherwise specified.

MOISTURE

Moisture shall be determined by Method IV, Electric Air-Oven Method, 7, as given in Chapter XXVII, Page 354 of the Fifth Edition of the Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists. This method is as follows:

IV. Electric Air-Oven Method—Official

(Not intended for use when subsequent fat determination is to be made on same sample.)

Regulate electric air oven to 135°, ± 2°. Using low, covered A1 dishes, 2, weigh ca 2 g of sample into each dish and shake until contents are evenly distributed. With covers removed, place dishes and covers in oven as quickly as possible and dry samples for 2 hours. After placing covers on dishes transfer them to desiccator to cool. Weigh, and calculate loss in weight as moisture.

PROTEIN

Determine N for the calculation of protein by the Kjeldahl-Gunning-Arnold Method, 23, as given in Chapter II, Page 26 of the Fifth Edition of the Official and Tentative Methods of the Association of Official Agricultural Chemists. This method is as follows:

Kjeldahl-Gunning-Arnold Method—Official

Place 0.7-3.5 g, according to N content of material to be analyzed, in a digestion flask. Add 15-18 g of K_2SO_4 or anhydrous Na_2SO_4, 1 g of $CuSO_4$ or ca 0.7 g of HgO (or its equivalent in metallic Hg), and 25 ml of the H_2SO_4. Heat mixture gently until frothing ceases, then boil briskly, and continue digestion for a time after mixture is colorless or nearly so, or until oxidation is complete (ca 2 hours). Cool, add ca 200 ml of H_2O and if HgO or metallic Hg has been used, add also 50 ml of the K_2S or Na_2S or $Na_2S_2O_3$ soln. Make strongly alkaline with the NaOH soln and proceed as directed under 21.

The Method 21 referred to above is the Kjeldahl Method. This method provides for the following procedure after the digestion of the sample:

"After cooling, dilute with ca 200 ml of H_2O, and add a few pieces of granulated Zn or pumice stone to prevent bumping, and 25 ml of the K_2S or Na_2S or $Na_2S_2O_3$ soln with shaking. (If $Na_2S_2O_3$ is to be used, it should first be mixed with the NaOH so that they may be added together. When no Hg or HgO is to be used the addition of K_2S or Na_2S or $Na_2S_2O_3$ soln is unnecessary.) Add sufficient NaOH soln to make reaction strongly alkaline (50 ml usually sufficient), pouring it down side of flask so that it does not mix at once with the acid soln. Connect flask to condenser by means of Kjeldahl connecting bulb, taking care that tip of condenser extends below surface of the standard acid in receiver; mix contents by shaking and distil until all NH_3 has passed over into a measured quantity of the standard acid. (First 150 ml of distillate generally contains all the NH_3.) Titrate with standard alkali soln, using the methyl red or cochineal indicator."

OIL

The official method for determining fat or oil in meal shall be the American Oil Chemists' Society's Official Method, Official and Tentative Methods of the American Oil Chemists' Society, revised to January 1, 1941, Page 5. This method is as follows:

(a) APPARATUS. Extraction apparatus of the Butt type as used for oil in cottonseed.

(b) SAMPLE. Five grams of finely ground cake or meal; two grams of finely ground meats.

(c) DETERMINATION. Wrap the accurately weighed sample in a 125 or 150 mm. filter paper (S. & S. No. 597 or equivalent grade) and rewrap in a second paper or papers in such a manner as to prevent escape of the meal, leaving the top of the second paper open like a thimble. Place a piece of absorbent cotton in the top of the thimble to distribute the dropping solvent. Place wrapped sample in a glass extraction tube of the Butt type and extract for three hours under a reflux condenser, using about 25 ml. petroleum ether (See Specifications) in a tared flask of 50 to 125 ml. capacity. The solvent should fall from the condenser on the center of the thimble at a rate of at least 150 drops per minute. The volume of the solvent should be kept approximately constant. After extraction is complete, evaporate off the solvent until no trace remains, cool and allow to remain in balance room at least ten minutes before weighing. Any extracted matter in filter papers must be deducted. Weigh, calculate percentage and report as oil. Hulls are extracted in a similar manner but meats, after two hours extraction, must be reground and extracted for an additional two hours.

CRUDE FIBER—OFFICIAL

The official method for determining crude fiber is given in Chapter XXVII, Page 357-8 of the Fifth Edition of the Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists. This method is as follows:

Reagents

(a) SULFURIC ACID SOLN. Contains 1.25 g of H_2SO_4 per 100 ml.

(b) SODIUM HYDROXIDE SOLN. Contains 1.25 g of NaOH per 100 ml, free, or nearly so, from Na_2CO_3. The strength of these solns must be accurately checked by titration.

(c) ASBESTOS. Digest on steam bath or at equivalent temp. for at least 8 hours with an approximately 5% NaOH soln and thoroly wash with hot H_2O; then digest in a similar manner for 8 hours with HCl (1+3) and again wash thoroly with hot H_2O. Dry, and ignite at bright red heat.

Apparatus

(a) CONDENSER. Use condenser that will maintain constant volume of soln thruout process of digestion.

(b) DIGESTION FLASKS. Use digestion flasks of such size and shape that soln will be not less than 1" nor more than 1.5" in depth. A 700-750 ml Erlenmeyer flask is recommended.

(c) FILTERING CLOTH. Use filtering cloth of such character that no appreciable solid matter passes thru when filtering is rapid. Butcher's linen or dress linen with ca 45 threads to the inch or No. 40 filtering cloth made by National Filter Cloth and Weaving Company, 1717 Dixwell Ave., Hamden, Conn., or its equivalent, may be used.

Determination

Extract 2 g of the dry material with ordinary ether, or use residue from ether extract determination (22 or 23), and transfer residue, together with ca 0.5 g of asbestos, to digestion flask. (If residue from the ether extract is used and proper quantity of asbestos has already been added, further addition is unnecessary.) Add 200 ml of the boiling H_2SO_4 soln, immediately connect digestion flask with condenser, and heat. (It is essential that contents of flask come to boiling within 1 min. and that the boiling continue briskly for exactly 30 min.) Rotate flask ca every 5 min. in order to mix charge thoroly. Take care to keep material from remaining on sides of flask out of contact with soln. (A blast of air conducted into flask will serve to

reduce frothing of liquid.) At expiration of 30 min. remove flask, immediately filter thru linen in fluted funnel, and wash with boiling H_2O until washings are no longer acid. Bring a quantity of the NaOH soln to boiling and keep at this temp. under reflux condenser until used. Wash charge and asbestos back into flask with 200 ml of the boiling NaOH soln, using wash bottle marked to deliver 200 ml. (The boiling NaOH soln is conveniently transferred to the wash bottle by means of bent tube thru which liquid is forced by blowing into tube connected with top of the reflux condenser attached to the NaOH flask.) Connect flask with reflux condenser and boil for exactly 30 min., so timing the boiling with the alkali that contents of different flasks will reach boiling point ca 3 min. apart, which permits sufficient time for filtration. At expiration of 30 min. remove flask and immediately filter thru Gooch prepared with asbestos mat, thru alundum crucible, or thru the filtering cloth in fluted funnel. If the filtering cloth is used, thoroly wash residue with boiling H_2O and transfer it to Gooch crucible prepared with thin but close layer of ignited asbestos. After thoro washing with boiling H_2O, wash with ca 15 ml of alcohol. Dry crucible and contents at 110° to constant weight. Cool in an efficient desiccator and weigh. Incinerate contents of crucible in electric muffle or over Meker burner at dull red heat until carbonaceous matter has been consumed (ca 20 min.). Cool in desiccator and weigh. Report loss in weight as crude fiber.

TRADING RULES

Governing Purchase and Sale

of

SOYBEAN OIL

Adopted May 21, 1930; Amended October 22, 1931; Amended October 13, 1932; Amended October 18, 1933; Amended October 18, 1934; Amended August 21, 1936; Amended September 18, 1936; Amended October 16, 1936; Amended October 22, 1937; Amended August 26, 1938; Amended August 10, 1939; Amended June 6, 1940; Amended October 18, 1940; Amended October 13, 1941; Effective October 13, 1941; Amended February 23, 1942; Effective April 1, 1942; Amended July 7, 1943; Effective July 7, 1943; Amended September 15, 1943; Effective October 1, 1943; Amended July 5, 1944; Effective July 5, 1944; Amended Sept. 14, 1945; Effective October 1, 1945.

RULE 101 — GENERAL RULES

Section 1. Sales Contracts

All sales of Soybean Oil by Members of the Association shall be covered by a written sales contract under the Rules of the Association and shall be signed in duplicate by an officer of each company, showing official title, or by someone legally authorized to sign contracts for both Buyer and Seller.

Section 2. Governmental Regulations

Each sale is subject to all Federal and State laws as well as all ordinances, rules and regulations, orders or decrees passed or created by any lawful authority having jurisdiction over the parties and subject matter of the sale.

NOTE: A Uniform Sales Contract is printed in the Appendix.

RULE 102—QUALITY

Section 1. The Standard of quality shall be pure crude soybean oil of fair merchantable quality based on the season's production, which must conform to standard specifications of the Association, which are herewith made a part of the Trading Rules and which specifications are subject to modification from time to time as conditions may warrant, upon recommendation of the Finished Materials Standards Committee.

STANDARD SPECIFICATIONS
for
CRUDE DOMESTIC SOYBEAN OIL

Standard quality crude domestic soybean oil shall be produced from domestic soybeans, and shall conform to the standards of purity and quality hereinafter defined.

	Maximum	Minimum
*Iodine Number (Wijs)	....	130
Unsaponifiable Matter	1.5%	
Free Fatty Acids	1.5%	
Moisture and Volatile Matter (Allowance if over 0.2%).....	0.3%	
Break (Modified Gardner Method)	0.60%	

Method as accepted by the A. O. C. S. and reported on page 131 in the June 1940 issue of Oil & Soap and on page 382 in the July 15, 1940 Analytical Edition of Industrial and Engineering Chemistry.

*This specification applies only to high iodine value grade oil when stated in the original contract.

The methods of analysis shall be those of the American Oil Chemists' Society except where otherwise specified. To determine moisture and volatile matter, the A. O. C. S. Hot Plate Method may be used for routine transactions. In case of disputes, referee chemists shall use the A. O. C. S. official vacuum oven method.

Note: Free Fatty Acid shall be determined in accordance with the F. A. C. method as shown on page 29 of the handbook of Official and Tentative Methods of the A. O. C. S. (Official testing methods as specified above are set forth in an appendix to this volume.)

Section 2. Any Crude Soybean Oil which does not comply with Standard Specifications as shown in Rule 102, Section 1, shall be replaced free of expense to Buyer, unless Buyer and Seller mutually agree to the following allowances for off quality:

(a)	Free Fatty Acids in excess of 1.5%	1/2% of purchase price for each 1/2% or fraction thereof.
(b)	Moisture and Volatile Matter in excess of 0.2%	2/10% of purchase price for each 1/10% or fraction thereof.
(c)	Break in excess of 0.60%	2/10% of purchase price for each 1/10% or fraction thereof.

(d) Settlings

Sludge shall be considered the solid residue which cannot be pumped and squeegeed from the car **when corrected for outturn weights.** A tolerance of 150 pounds will be allowed. If the car contains more than 150 pounds, an allowance at contract price for the amount of sludge over 150 pounds will be made. When sludge in excess of the tolerance is found Buyer shall wire Seller for instructions with respect to the inspecting and cleaning of car, allowance for cleaning not to exceed $5.

Section 3. If Buyer and Seller cannot agree on proper allowance as outlined in Section 102, then rejection and replacement procedure shall be as follows: Rejection is to be made by telegraph within seventy-two hours after delivery of the oil to Buyer's plant. If rejection is uncontested, Seller shall tender replacement shipment 24 hours from time of acceptance of rejection. A telegram offering delivery, followed by a confirming letter on the same day, shall constitute a tender. Actual shipment must follow within 48 hours of the sending of the telegram unless otherwise agreed upon between Buyer and Seller.

A. If Buyer and Seller do not agree on analysis of sample drawn in accordance with Section 4, adjustment shall be made on the average of Buyer's and Seller's analysis. Or when this is unacceptable to either Buyer or Seller, then the official sample (as defined in Section 4) shall be sent to an official chemist and adjustment shall be based on the official chemist's analysis. The fee for this work shall be charged to the account of the party against whom the decision results.

Section 4. The official sample shall be a sample drawn at time of loading in accordance with the A.O.C.S. official method for sampling crude oils (see A.O.C.S. Handbook Pg. 23) and shall be so indicated on invoice. If the Seller neglects to provide such a sample at the time of loading or fails to show on invoice that an official sample has been taken, a sample drawn at destination shall be official when taken in accordance with the A. O. C. S. official method for sampling crude oils (see A. O. C. S. Handbook Pg. 23).

Section 5. The Association has designated as Official Chemists and Samplers for Oil, the following:

P. W. Tompkins, Curtis & Tompkins, Ltd., 236 Front St., San Francisco, Calif.

G. W. Agee, E. R. Barrow, J. R. Mays, Jr., Barrow-Agee Laboratories, Inc., Memphis, Tennessee.

J. B. Hendrey, The Edwal Laboratories, Inc., 732 Federal St., Chicago, Illinois.

R. H. Fash, F. B. Porter, The Fort Worth Laboratories, Fort Worth, Texas.

Thos. C. Law, J. D. Evans, Law & Company, Inc., Atlanta, Ga.

H. P. Trevithick, Produce Exchange Bldg., 2 Broadway, New York, N. Y.

NOTE: The current complete list of Official Chemists and Samplers for Oil is carried in the Appendix.

Section 6. Sale of special grade of Soybean Oil on the basis of Crusher's individual specifications are subject to all Trading Rules of the Association except as to quality under Rule 102.

Section 7. Seller shall not be responsible for adaptability of goods for any specific purpose, unless specifically provided for in the contract.

RULE 102—DEFINITIONS OF GRADE AND QUALITY OF CRUDE SOYBEAN OIL

(Adopted but not to be used pending the time industry may operate under peace conditions without price control.)

Section 1. Standard of Quality.

The Standard of Quality shall be the designated type of pure soybean oil of fair average quality based on the season's production, which must conform to standard specifications of the Association, which are herewith made a part of the Trading Rules and which specifications are subject to modification from time to time as conditions may warrant, upon recommendation of the Technical Committee.

Section 2. Soybean Oil — Crude Grades

The grades and quality of crude soybean oil for edible purposes shall be determined by the specifications, methods and tests as herein described or referred to.

Section 3. Methods of Analysis

A. The methods of analysis shall be those of the American Oil Chemists' Society except where otherwise specified.

B. The refining loss method shall be the method as outlined in this Appendix.
Note: Refining loss method on extracted oils to be subject to seller's option as to whether the tentative A. O. C. S. Cup Method or Centrifugal Method shall apply.

C. The bleaching test shall be the method outlined in this Appendix.

D. Free fatty acid shall be determined in accordance with the F.A.C. method as shown on Page 29 of the handbook of Official and Tentative Methods of the A.O.C.S.

E. The method for measuring the amount of green color on filtered crude oil made from frost damage, immature or dark varieties of soybeans shall be determined by the method outlined in this Appendix.

F. The method for measuring red color on refined bleached oil made from other types of damaged soybeans, such as winter or weather damaged, bin burned, etc., shall be determined by the bleaching method outlined in this Appendix.

Section 4. Settlements for Crude Soybean Oil

A. Refining Loss Adjustment **(Tentative)**

Seller shall pay Buyer for excessive refining loss at the rate of ¾ of 1% contract price for each 1 per cent refining loss above 7% calculated on the weight of crude. Where the crude oil delivered refines with a loss in weight under 7%, the Buyer will credit the Seller at the rate of ¾ of 1% of the contract price for each 1 per cent under 7%. Refining loss to be figured fractionally throughout.

B. Green Crude Oil Adjustment

The grades of crude soybean oil containing green color with corresponding discounts shall be as follows:

No. 1 prime color grade shall be lighter in color than Standard A.	No discount on green color.
No. 2 green color grade shall be equal to or darker than Standard A, but lighter than Standard B.	Discount 1% of contract F.O.B. mill price.
No. 3 green color grade shall be equal to or darker than Standard B.	Discount 2% of contract F.O.B. mill price.

Note: Borderline cases shall be considered to be of the poorer quality.

C. Refined Bleach (R.B.) Color Adjustment for Crude Soybean Oil **(Tentative).**

Note: The refined and bleached color test shall be made on the sample of neutral oil that has given the lower refining loss.

The ratio of yellow to red shall be 10 to 1.

The following schedule of discounts shall apply:

R. B. Color	% Discount	R. B. Color	% Discount	R. B. Color	% Discount
2.0 Red	0.0%	4.5 Red	2.90%	7.0 Red	4.70%
.1	.15	.6	3.00	.1	4.75
.2	.30	.7	3.10	.2	4.85
.3	.50	.8	3.20	.3	4.90
.4	.60	.9	3.25	.4	5.00
.5	.70	5.0	3.30	.5	5.10
.6	.80	.1	3.35	.6	5.15
.7	.90	.2	3.40	.7	5.25
.8	1.00	.3	3.50	.8	5.30
.9	1.15	.4	3.55	.9	5.40
3.0	1.30	.5	3.60	8.0	5.50
.1	1.40	.6	3.65	.1	5.55
.2	1.55	.7	3.70	.2	5.65
.3	1.70	.8	3.80	.3	5.70
.4	1.85	.9	3.85	.4	5.80
.5	2.00	6.0	3.90	.5	5.90
.6	2.10	.1	3.95	.6	5.95
.7	2.20	.2	4.05	.7	6.05
.8	2.30	.3	4.10	.8	6.10
.9	2.35	.4	4.20	.9	6.20
4.0	2.45	.5	4.30	9.0	6.25
.1	2.55	.6	4.35	Over 9.0 Sample Grade	
.2	2.65	.7	4.45		
.3	2.75	.8	4.50		
.4	2.80	.9	4.60		

Note: Discounts to be based on F.O.B. mill price.

D. Application of Proper Discount for Off Color Grades of Crude Soybean Oil

The discount for green crude soybean oil shall not apply unless it is greater than the discount as applied to the red color of the refined and bleached oil. Then the greater of the two discounts will apply, but in no case both.

E. Settlings

Sludge shall be considered the solid residue which cannot be pumped and squeegeed from the car when corrected for out-turn weights. A tolerance of 150 pounds will be allowed. If the car contains more than 150 pounds, an allowance at contract price for the amount of sludge over 150 pounds will be made. When sludge in excess of the tolerance is found Buyer shall wire Seller for instructions with respect to the inspecting and cleaning of car, allowance for cleaning not to exceed $5.

F. Method of Handling Adjustments of Crude Soybean Oil.

1. If the Buyer's analysis of a sample taken at destination shows that a discount is due, the Buyer shall advise the Seller his analysis by wire within three working days after the arrival of oil at Buyer's plant. Seller shall have three working days after receipt of wire to accept or reject Buyer's analysis. If Seller rejects, adjustment shall be made on the average of Buyer's and Seller's analysis. Or when this is unacceptable to either Buyer or Seller, then the official sample (as defined in Section H) shall be sent to an Official Chemist and adjustment shall be based on the Official Chemist's analysis. The fee for this work shall be charged to the account of the party against whom the decision results.

2. If the Buyer's analysis of a sample taken at destination shows that a premium is due, the Buyer shall advise the Seller of his analysis promptly by mail. Seller shall have three working days in which to accept or reject Buyer's analysis. If Seller rejects, adjustment shall be made on the average of Buyer's and Seller's analysis. Or when this is unacceptable to either Buyer or Seller, then the official sample (as defined in Section H) shall be sent to an Official Chemist and adjustment shall be based on the Official Chemist's analysis. The fee for this work shall be charged to the account of the party against whom the decision results.

G. Rejection

If Buyer and Seller cannot agree on proper allowance as outlined in Rule 102, Section 4, then rejection and replacement procedure shall be as follows: Rejection is to be made by telegraph within seventy-two hours after delivery of the oil to Buyer's plant. If rejection is uncontested, Seller shall tender replacement shipment 24 hours from time of acceptance of rejection. A telegram offering delivery, followed by a confirming letter on the same day, shall constitute a tender. Actual shipment must follow within 48 hours of the sending of the telegram unless otherwise agreed upon between Buyer and Seller.

H. Official Sample

The official sample shall be a sample drawn at time of loading in accordance with the A.O.C.S. official method for sampling crude oils (see A.O.C.S. Handbook Pg. 23) and shall be so indicated on invoice. If the Seller neglects to provide such a sample at the time of loading or fails to show on invoice that an official sample has been taken, a sample drawn at destination shall be official when taken in accordance with the A.O.C.S. official method for sampling crude oils (see A.O.C.S. Handbook Pg. 23).

I. Official Chemists and Samplers for Oil

The designated Official Chemists and Samplers for Oil for this Association are listed in the Appendix.

The Official Chemists shall be appointed by the Technical Committee after they have fulfilled the requirements of the Referee Board of the American Oil Chemists' Society.

RULE 103 — DEFINITIONS OF GRADES AND QUALITY OF SOYBEAN OIL USED FOR INDUSTRIAL PURPOSES

Section 1. Individual Specifications

Sale of crude and special grades of Soybean Oil on the basis of processor's individual specifications are subject to all Trading Rules of the Association except as to quality as specified by Rule 102.

Section 2. Responsibility for Adaptability

Seller shall not be responsible for adaptability of goods for any specific purpose, unless specifically provided for in the contract.

Note: Specifications for Industrial Oil will be found in the Appendix.

RULE 104 — SOAP STOCK, ACIDULATED SOAP STOCK AND TANK BOTTOMS

Section 1. Soap Stock

Soap stock is the by-product that results from the caustic alkali refining of soybean oil. No claim on account of absence of glycerine will be considered unless contract specifies glycerine content. The contract price is based on 50 per cent total fatty acid. Soap Stock containing less than 30 per cent total fatty acid will not be considered merchantable and may be rejected. Soap Stock must not be adulterated with any other Oil or with Soap Stock made therefrom without consent of the purchaser.

In case preservatives are added to the Soap Stock, the nature and amount of same must be declared in the contract.

Section 2. Acidulated Soap Stock

Acidulated Soap Stock is the product of the complete acidulation of Soap Stock as defined in Rule 104, Section 1, thoroughly settled, and contract price is based on total fatty acid content of 95 per cent. If the total fatty acid content falls below 85 per cent, the product is not merchantable Acidulated Soap Stock, and may be rejected. No claim on account of absence of glycerine will be considered unless contract specifies glycerine content.

Section 3. Method of Sampling and Analysis of Soap Stock and Acidulated Soap Stock

Methods as specified in the A.O.C.S. book of methods shall apply.

Section 4. Methods of Settlement on Soap Stock and Acidulated Soap Stock

The Seller's analysis shall be given to the Buyer within five days and the Buyer's analysis given to the Seller within ten days of the receipt of the sample. If the difference between the Buyer's and Seller's analysis is less than one per cent in total fatty acids content, the two shall be averaged for use in settlement. If the difference is more than one per cent, the Official Sampler shall forward the third sample to the Official Chemist. The mean of the Official Chemist's analysis and that of the Buyer or Seller nearest thereto shall be used for final settlement.

Section 5. Tank Bottoms

Tank Bottoms will be sold on sample only.

RULE 105 — QUANTITY

Section 1. Unit of Weight

Soybean Oil shall be sold on a net weight basis in pounds. The unit of weight is the avoirdupois pound (16 ounces).

Section 2. Unit of Sale

The unit of sale may, by mutual agreement between Buyer and Seller at time of sale, be the tank car, tank truck, drum or barrel. If sale is made in containers the approximate weight of the containers in net pounds shall be specified.

The following container net weights in pounds will be considered as standard unless Buyer and Seller mutually agree on some other figure at time of sale:

*8,000 gallon tank car (standard)	61,000 lbs. approximate*
Tank Truck—Size varies	State approximate weight
Steel Drum	420 lbs. approximate
Wooden Barrel	375 lbs. approximate

*The 8,000 gallon tank car with a capacity of approximately 61,000 pounds shall be considered as "Standard" with a tolerance of 2% allowed; making 59,780 pounds the lower limit and 62,220 pounds the upper limit.

Shipments exceeding 62,220 pounds and up to 63,000 pounds will constitute a good delivery, but excess of entire amount over 62,220 pounds to be billed at the market or at the contract price, at Buyer's option.

Deliveries under 59,780 pounds will not constitute a good delivery unless consented to by the Buyer.

Section 3. Contract Delivery

Contracts shall be completed by delivering the approximate number of pounds in such containers as Buyer shall specify at time of shipment. Unless Buyer arranges with Seller in advance of last shipment on contract, to purchase an additional quantity to fill out a carload, the

overage necessitated by car capacity will be invoiced at the market price on date last car is shipped.

Section 4. Light Weight Shipments

If tank cars or carloads of containers are not loaded to capacity as required by railroad regulations, the Seller shall be liable for excess freight on capacity weight, unless Seller shall have first obtained Buyer's permission to ship cars light weight.

RULE 106 — INQUIRIES AND QUOTATIONS

Section 1. Inquiries or Bids

All inquiries or bids shall state quantity, type of container, grade and type, time of shipment and point of delivery.

Section 2. Quotations and Bid Acceptances

All quotations and bid acceptances shall state quantity, type of container, grade and type, time of shipment, price per pound, terms and point of delivery.

RULE 107 — PRICE

Section 1. Unit of Price

The price of Soybean Oil shall be quoted in cents per pound.

Section 2. Change in Container Type

In the event that delivery is taken in a different container than specified in contract, the Seller's container differentials prevailing on date of change of specifications shall apply in determining the invoice price of a specific delivery against contract.

Section 3. Change in Oil Type

In the event that Buyer takes delivery of refined oils against a contract written on a "crude basis," the Seller's differentials on refined oils prevailing on date of change of specifications shall apply in determining the invoice price of a specific delivery against contract.

Section 4. Changing Unit Delivery

In the event that contract is drawn on a carload basis for direct shipment from plant and Buyer elects to take delivery in L.C.L. quantities, the Seller's L.C.L. or warehouse differential over carloads on date of change of specifications shall apply in determining the invoice price of a specific delivery against contract. Any additional transportation costs are for the account of Buyer.

Section 5. Change in Delivery Point

If Buyer requests shipment to other points than the delivery point specified in contract, any increase or decrease in Seller's cost is for the account of Buyer.

Section 6. Taxes

Any taxes now or hereafter imposed by the United States Government or by any taxing body upon the manufacture, sale, transportation and/or use of Soybean Oil are for the account of Buyer.

RULE 108 — TERMS

Section 1.

Seller reserves the right to restrict the terms of payment if in his judgment the financial responsibility of the Buyer does not warrant shipment on terms originally stated in contract.

Section 2. Default in Payment

Failure to accept delivery of or pay for any portion of specified quantity of Soybean Oil covered by contract shall at Seller's option release Seller from making further deliveries. In case of default in payment of any invoice when due, the whole sum owed by Buyer shall become due at once.

RULE 109 — TIME OF SHIPMENT

Section 1. Shipping Terms

Unless the exact shipping date is agreed upon by Buyer and Seller at time of sale, shipments for nearby positions shall be interpreted as follows, starting from the date shipping instructions are received by Seller:

Quick shipment	Within 2 working days
Immediate shipment	Within 5 working days
Prompt shipment	Within 10 working days

Section 2. Contract Delivery Period

On contracts covering specific quantities for shipment during a specified period, shipment is to be made during the month or months specified in the contract.

Section 3. Delivery Specifications

The Buyer shall furnish specifications for shipment to Seller in ample time to enable Seller to execute order within the period or periods specified in contract. Under no circumstances shall the Seller be either expected or required to make physical tender of all or any part of the oil covered by any specific contract for any specified delivery unless Buyer has first furnished written specifications for shipment as provided herein.

Section 4. Failure to Accept Shipment

If Buyer fails to accept shipment within the period indicated, and unless Buyer and Seller can mutually agree upon extention, then Seller would have the right to (1) ship the undelivered oil to the Buyer within five days after giving notice by registered mail or telegraph; (2) sell the oil in the open market for Buyer's account; (3) or dispose of the contract by any other method prescribed by law.

Section 5. Failure to Deliver

Failure on the part of Seller due to uncontrollable circumstances to deliver any installment of Soybean Oil shall not be a breach of the entire contract.

Section 6. Date of Shipment

The date of the bill of lading shall be considered as the date of shipment.

RULE 110 — WEIGHTS

Section 1. Official Weights

Seller's official weights are to govern settlement. Seller shall furnish certified copy of official weights at point of origin on shipments in tank cars and tank trucks. If Seller cannot furnish official weights at point of origin on net contents of tank cars and tank trucks either by means of inside tank scales or track scales (gross, tare, and net, if track scale weights) Buyer shall have the right to have official weights taken at point of destination, which weights shall govern.

In no case shall railroad weighing be considered as official weights. Cost of obtaining official weights shall be for the account of Seller.

Weights shall be considered official when weighing is done by sworn weighmasters of Boards of Trade or Chambers of Commerce, or any other similarly official weighing and inspection bureaus which have been approved by the National Soybean Processors Association.

Section 2. Weight Claims

Whenever a sale is made f.o.b. Buyer's destination, no allowance for shortage or damage will be made by Seller unless Buyer furnishes complete evidence, including railroad inspection report, so as to enable Seller to present complete claim to the carrier.

RULE 111 — FREIGHT RATES

Section 1. Rate Changes

Unless otherwise stipulated at time of sale, delivered prices specified in contract are based on freight rates in effect on date of sale and any increase or decrease in freight rates is for account of Buyer.

RULE 112 — ROUTING

Section 1. Buyer's Tank Cars

When Buyer furnishes tank cars, Buyer shall have the right to specify routing, providing such routing does not involve additional freight expense to the Seller over the cheapest rate.

Section 2. Seller's Tank Cars

When Seller furnishes tank cars, Seller shall have the right to specify routing, with the exception of the delivering carrier, which shall be at the option of the Buyer.

Section 3. Drum or Barrel Shipments

On shipments of barrels or drums, Seller shall have the right to specify routing.

RULE 113 — TANK CARS

Section 1. Buyer's or Seller's Tank Cars

At time of sale it shall be specified whether Buyer's or Seller's tank cars are to be used. If there is failure to specify then it is understood Seller's tanks are to be provided.

Section 2. Tank Car Appliances

All tank cars furnished either by the Seller or the Buyer must be provided with steam coils and the necessary appliances for their ready loading and unloading in all kinds of weather.

Section 3. Inspection of Tank Cars

Tank cars must be inspected by Seller as to condition of steam coils, cap, dome cover, and valve, and must be sealed both at the outlet valve and dome before being shipped.

Seller shall inspect Buyer's tanks before loading and if found unsatisfactory notify Buyer by wire. Any necessary cleaning and repairing shall be at the expense of the Buyer on the basis of actual cost. Seller shall not be held liable for contamination when reasonable care has been taken to safeguard Buyer's interest.

If a loaded Seller's tank car is delivered to Buyer in a faulty condition, immediate request must be made by Buyer for inspection by Seller. Seller shall thereupon either make such inspection or arrange with Buyer to correct such faulty condition, the Seller being liable only to the extent of the expense incurred in correcting it.

Section 4. Reconsignment

Buyer and Seller shall not divert or reconsign tank cars without mutual consent. Any expense incidental to reconsignment or diversion is for the account of the party responsible.

Section 5. Unloading Time

Buyer agrees to empty Seller's tank cars promptly upon arrival and

to return same empty as per Seller's instructions. Forty-eight hours free time will be allowed for unloading. Customary charge for each twenty-four hours thereafter shall be paid by Buyer to Seller for tank car rental. Seller's tank cars are not to be held for storage purposes by Buyer except by first securing permission to do so from Seller. In the absence of instructions for return routing, Buyer shall wire Seller for same and in case of delayed answer, demurrage and delay to be for Seller's account.

RULE 114 — COMMISSION OR BROKERAGE

Section 1.

Selling commission or brokerage on Crude or Refined Soybean Oil shall be paid at the rate of not more than 5 cents per 100 pounds and shall be based on invoice weight.

The selling commission on Soybean Oil Soapstock shall not be more than 15 cents per 400 pounds and shall be based on invoice weight.

Unless otherwise specifically agreed at the time of sale, the Seller shall pay selling commission or brokerage to agent or broker consummating sale.

The selling commission or brokerage is understood to have been earned when Seller accepts contract of sale and considered due when delivery has been made. In the event delivery is not made due to conditions beyond Seller's control no brokerage or commission will be paid. In any event if any brokerage or selling commission is paid it will be paid only by the Seller.

RULE 115 — ARBITRATION

Section 1. All controversies arising out of contracts made under these Trading Rules or the breach thereof, unless amicably adjusted otherwise, shall be settled by arbitration in accordance with the Rules, then obtaining, of the American Arbitration Association, and judgment upon the award rendered may be entered in the highest court of the forum, state or federal, having jurisdiction.

RULE 116 — CONTINGENCIES

Section 1. If in consequence of any act of God, fire, flood, wind, explosion, war, embargo, civil commotion, sabotage, law, an act of government, or because of labor difficulties, the Seller shall be unable to ship or the Buyer unable to receive, any soybean oil to be shipped under a contract existing between them, and if the disabled party delivers notice to the other of that fact within two days and, further, furnishes proof thereof within five days of receipt of the other's request, provided such request shall be made within a week after receipt of notice of disability, the parties shall have rights and duties as follows:

(1) The disabled party may defer shipments until the disability ceases, but not for more than thirty (30) days next after the disability occurred.

(2) If at the end of the deferred period the parties to the contract have not arrived at an agreement, and a request for arbitration

has not been filed by either party, and the disabled party has not delivered notice that the disability has ceased, the party not disabled may cancel the contract, and the difference between the contract price and the market price at the close of business on the day the deferred period terminates shall be paid by the Buyer to the Seller if the market price is lower, and by the Seller to the Buyer if the market price is higher, whether the Seller or Buyer is the disabled party.

(3) If the parties do not agree that the contingency has or will delay the execution of the contract, then the matter shall be arbitrated in accordance with Rule 115 of these Trading Rules by either party filing submission of the matter with the Clerk of the Tribunal of the American Arbitration Association having jurisdiction. If neither party files a submission for the arbitration within sixty (60) days from the date the contingency occurs, both parties shall be barred from recovering damages from the other.

(4) The foregoing rule shall not apply in cases of shipments delivered to a carrier prior to the receipt of notice of the disabling event.

RULE 117 — AMENDMENTS

Section 1. These Trading Rules may be amended by a majority vote of the membership at any regular or special meeting, or by mail vote when authorized by the Board of Directors, providing the Trading Rules Committee shall have first made such recommendation for amendment and a copy of such proposed changes submitted to each member of the Association at the time meeting is called, or if by mail vote in accordance with Section 2 of Article VIII of the Constitution of this Association.

Section 2. All amendments shall become effective immediately upon adoption. The Secretary and all members of the Association shall have such amendments inserted in the blank pages of all copies of Trading Rules remaining in their possession.

Appendix to Trading Rules on Soybean Oil

UNIFORM SALES CONTRACT

Contract No.....

Contract made at.....(City).....,.....(State).....,this.....

day of.....194.....between.....(Seller).....,of.....(City).....

.....(State).....,hereinafter called the Seller, and.....(Buyer).....

of.....(City).....,.....(State).....,hereinafter called the Buyer.

The Seller hereby sells and agrees to deliver, and the Buyer hereby purchases and agrees to receive in the amounts and on the terms and

conditions hereinafter set forth, the following quantity of PURE SOYBEAN OIL:

PRICE
Crude Basis

Tank Cars ____¢ per lb.
Tank Wagons ____¢ per lb.
Drums ____¢ per lb.
Barrels ____¢ per lb.
Cans ____¢ per lb.

_____Pounds
_____Tank Cars about_____Lbs. each
_____Tank Wagons about_____Lbs. each
_____Drums about 400 lbs. each.
_____Lbs. each

F. O. B. _____

Delivery from warehouse (L.C.L.)
Time of Shipment:

Delivery in car lots from mill

_____Jan.	_____Apr.	_____July	_____Oct.
_____Feb.	_____May	_____Aug.	_____Nov.
_____Mar.	_____June	_____Sept.	_____Dec.

Agent or Broker_____

Terms of payment: Net cash, no discount. Carloads: Sight draft, bill of lading attached. L. C. L. Shipments: 10 days net. Oil shipped on open terms subject to sight draft if not paid in 10 days.

This sale is made under the Trading Rules of the National Soybean Processors Association governing purchase and sale of Soybean Oil in effect on date of purchase, which Rules are hereby made a part of this contract.

The Buyer hereby acknowledges familiarity with the text of the Trading Rules of the National Soybean Processors Association and Buyer and Seller agree to be bound by the terms and conditions of said Rules.

This document and said Trading Rules contain the entire agreement between the parties hereto.

This contract shall be construed under the laws of the State of _____

IN WITNESS WHEREOF, the respective parties have signed these presents at_____

(Buyer)_____ (Seller)_____

By_____ By_____
(Title) (Title)

(This contract must be signed in duplicate by an officer of each Company, showing official title, or by someone duly authorized to sign contracts for both Buyer and Seller.)

Original to be signed and returned to Seller.

Duplicate for Buyer.

REFINING LOSS METHOD

CUP REFINING TEST FOR EXPELLER, HYDRAULIC AND EXTRACTED SOYBEAN OILS

I. Apparatus

The apparatus shall be that prescribed in the Official and Tentative Methods of the American Oil Chemists' Society.

II. Sodium Hydroxide Solutions

The method of preparing the sodium hydroxide solutions shall be that given in the Official and Tentative Methods of the American Oil Chemists' Society.

Lye strengths shall be 12° Be' for Expeller oil and Hydraulic oils and 14° Be' for Extracted and degummed oils. Two tests shall be made on each oil, using the maximum amount of sodium hydroxide as calculated from the formula (F.F.A./5.2) + 0.54 and two-thirds of this maximum quantity of sodium hydroxide for Expeller and Hydraulic oils. Seven-eighths and two-thirds of the maximum amount of sodium hydroxide solution shall be used for Extracted and degummed oils.

III. Refining Procedure

Heat the sample in hot water in original container to a temperature not to exceed 50° C. and mix well. Settlings must be thoroughly incorporated with the rest of the sample, as shown by examining the bottom of the container.

Place 500 grams of the thoroughly mixed sample of crude oil in a tared refining cup, and settle, if necessary, to allow air to escape. Adjust the temperature of the crude oil and water both to 20°—24° C. using ice to cool the water if necessary. With the agitator running 250 R.P.M. ± 10, add, as quickly as possible, the proper amount and strength of sodium hydroxide solution to the oil.

Continue stirring for exactly 90 minutes from the time the sodium hydroxide solution was added.

Then immediately transfer to the 65° C. bath and stir at 70 ± 5 R.P.M. for exactly twelve minutes (Extracted oil twenty minutes). Temperature of oil must then be 60°-65° C., adjusting the temperature of the water bath, if necessary, within the limits specified to obtain this final oil temperature.

At the end of the slow agitation period of the refining, the oil shall be allowed to settle in the 65° C. bath for one hour. Cool by settling in a cold water bath at 12-15° C. for one hour. The oil shall then be allowed to set overnight before pouring off. After settling overnight, the oil should again be chilled in a bath at 12-15° C. for 30 minutes before pouring off, unless the temperature has been maintained within this range.

Weigh the refining cup and contents and deduct this weight from the total weight of crude oil and cup to obtain loss by evaporation. Decant the refined oil into a tared refining cup and drain the soap stock for 30 minutes. Weigh the refined oil and filter through white filter paper (Eaton & Dykeman No. 617, Reeve-Angel No. 230.)

Weigh the soap stock cup with its contents. Then melt the soap stock by setting the cup in a water bath maintained at 75 ± 2° C., without stirring, for thirty minutes; cool in a cold water bath at a temperature of 12-15° C., or lower, to permit satisfactory draining of the oil. Then decant into a weighed container any additional oil thus recovered, draining fifteen minutes. Weigh the oil recovered from melting the soap stock separately and add this weight to the weight of the refined oil first obtained and subtract it from the weight of soap stock first obtained. Repeat the remelting, cooling, and decanting as above outlined, until the recovered oil from the last remelting does not amount to more than 1.5 grams. In cases where the soap stock does not solidify, the last small portion of oil can best be removed from the surface of the foots by means of a pipette.

Note:—Any foots floating on the surface of the oil or decanted with the oil must be recovered and added to the main body of foots before weighing. This can conveniently be accomplished by decanting the oil through a common tea strainer with a fine mesh screen which will retain the floating foots so that it can be returned to the main body of soap stock.

Note:—Oil should not be allowed to come in contact with copper, as the color is affected thereby in some cases. New equipment should be made of material not containing copper. Existing brass or copper equipment should be replaced or protected by a suitable coating, such as plating with a heavy coating of nickel.

IV. Calculations

Determine the refining loss by two methods of calculation, the results of which should check within one-quarter of one per cent. Report the average of the two methods of calculations:—Method No. 1: Weight of crude oil minus weight of refined oil gives the refining loss. Method No. 2: Weight of soap stock plus

loss in evaporation, minus weight of sodium hydroxide solution used gives refining loss.

TENTATIVE OFFICIAL CENTRIFUGAL REFINING TEST METHOD FOR EXTRACTED SOYBEAN OILS

(Modified from OIL AND SOAP, 19, 161-163, September, 1942)

I. APPARATUS

1. **Refining Apparatus:** As for the usual refining loss test (p. 12, A.O.C.S. Methods), except that the paddles are cut off so that they clear the walls of the centrifuge trunion cup by ¼ inch. Provisions shall be made to hold the trunion cups in place in the refining apparatus. (A wooden collar has been used successfully as a temporary means.)
2. **Scales:** Sufficient capacity to weigh a trunion cup with 200 grams of oil. Sensitivity, 1/10 gram.
3. **Centrifuge:** Any type capable of spinning cups at a relative centrifugal force (RCF) of about 1740 x gravity.

   R.C.F. per gram = $.0000111 \times n^2 \times r$

   n = r.p.m.
   r = distance in cm. from center of shaft to point in question

   (e. g. International type SB, size 1 or 2, reinforced models only, at 2800 r.p.m., radius 20 cm.)
4. **Trunion Cups:** 250 ml. capacity: (e. g. International Cat. No. 374 or Fisher Scientific Co. No. 5-334A)
5. **Head (International Cat. No. 277 or Fisher Scientific Co. No. 5-33A):** This head fits both International size 1 and 2 centrifuges.

II. ALKALI SOLUTION

1. For extracted and clarified extracted oils, use 23.50 per cent sodium hydroxide solution, allowable variation in concentration of alkali from 23.03 per cent to 23.97 per cent by weight. This solution is equivalent to 30° Be'.

III. PROCEDURE

1. Weigh trunion cups.
2. Add 200 grams of oil.
3. Add sodium hydroxide solution, using 30° Be' for extracted and clarified extracted oils in an amount sufficient to neutralize the free acidity plus .30 gram of dry NaOH per 100 grams of oil. Weight of dry NaOH needed for theory = .142 x F.F.A. expressed as percentage of oleic acid present. Total dry NaOH needed for 200 grams of oil is 2(.142 F.F.A. + .30). Add sodium hydroxide solution to all cups before proceeding to the next step. For example, 200 grams

of oil of .5 per cent F.F.A. will require .74 gram of dry sodium hydroxide equivalent to 3.2 grams of 30° Be'.

4. Place cup in refining apparatus bath at 20-24° C. and stir at 250 r.p.m. ± 10 for 60 minutes.
5. Immediately transfer to bath at 63-67° C. and stir for 30 min. at 70 r.p.m. ± 5 for 30 minutes. Then raise paddles and allow to stand 15 minutes in 65° bath.
6. Remove cups from bath, and centrifuge at 2800 r.p.m., radius 20 cm. for 30 minutes.
7. Weigh cup and contents to determine evaporation loss.
8. Decant oil into tared beaker and drain 30 minutes.
9. Scrape sides of cup with a small steel spatula and transfer oil removed to the beaker containing drained oil.
10. Weigh cup and foots.
11. Weigh refined oil in beaker.
12. Calculate results by two methods and report average of the two methods.
    (a) Weight of crude oil minus weight of refined oil gives refining loss, to be reported as per cent of crude oil.
    (b) Weight of soap stock plus evaporation loss, minus weight of sodium hydroxide solution used gives refining loss, to be reported as per cent of crude oil.

NOTE:

For bleaching, the official procedure is followed, except that only 150 grams of oil are used and the bleaching is performed in a 250-ml. beaker.

SOYBEAN OIL BLEACH TEST — REFINED OILS

I. **Apparatus**

Scales, weights, refining cups and stirring machine are to be similar to those specified in the A.O.C.S. Method for Refining, but with T-shaped paddles one-half inch wide instead of one inch wide.

Gas burners or electric heaters to heat the oil in the cups.

Official Activated Bleaching Earth:—This is to be obtained from **Central Scientific Co.,** 1700 W. Irving Park Blvd., Chicago, Ill., acting as distributors for the National Soybean Processors Association. A fresh supply must be obtained on August 1 and February 1 each year.

II. **Determination**

Weigh 300 grams of refined oil into a refining cup; add 4% of Official Activated Bleaching Earth and heat to 120° C. taking not more than five minutes. Use mechanical agitation at approximately 250 RPM. Then stir mechanically at 250 RPM (plus or minus 10) for five minutes, not allowing temperature to fall below 105° C.

Filter through an unused close textured filter paper. After

sufficient oil has passed the filter to insure clearness, collect a sample for color reading. Cool and read color immediately as prescribed in the A.O.C.S. Method for Color.

FREE FATTY ACIDS

Page 29 of the handbook of Official and Tentative Methods of the A. O. C. S.

ALCOHOL.—This shall be approximately 95 per cent ethyl alcohol, freshly distilled from sodium hydroxide, which with phenolphthalein gives a definite and distinct end point.

Note.—For routine work, methanol or Formula 30 denatured ethyl alcohol of the same strength may be used.

Per Cent F. F. A. Range	Sample Weight to be Used	Amount of Alcohol to be Used	Strength of Alkali
0.0— 0.2%	56.4 ± .2 gm.	50 ml.	N/10 NaOH
0.2— 1.0	28.2 ± .2 gm.	50 ml.	N/10 NaOH
1.0— 30.0	7.05 ± .05 gm.	75 ml.	N/4 NaOH
30.0— 50.0	7.05 ± .05 gm.	100 ml.	N/4orN-NaOH
50 —100	3.525± .001 gm.	100 ml.	N-NaOH

DETERMINATION.—Weigh up a quantity of the sample depending on the product being analyzed (see table above.) Add 50 to 100 cc. of hot neutral alcohol and titrate with 0.5, 0.25 or 0.1 N sodium hydroxide depending on the fatty acid content, using phenolphthalein as indicator. Calculate to oleic acid.

TENTATIVE METHOD OF GRADING SOYBEAN OIL FOR COLOR

GRADE STANDARDS

Prime crude soybean oil is oil which is not darker than a standard solution of nickel sulfate (Standard A) of a concentration prescribed when viewed using a prescribed red glass filter and under conditions stated under Method of Reading.
No. 2 grade shall be darker than prime but lighter than a second prescribed concentration of nickel sulfate solution (Standard BO under the conditions as above.)
No. 3 grade shall be darker than No. 2.
Borderline cases shall be considered as the lower grade.

METHOD OF READING

Standard Nickel Sulfate Solutions

(Standard A) 7 grams low cobalt $NiSO_4.6H_2O$ of reagent grade per 100 ml. of total aqueous solution.

(Standard B) 9 grams low cobalt $NiSO_4.6H_2O$ of reagent grade per 100 ml. of total aqueous solution.

Viewing Filter

Corning glass filter No. 2403 (old catalog No. 241) which passes only wave lengths essentially beyond 640 mu.

Reading

METHOD I (Preferred)—The comparison of oil and standard shall be made at exactly 1" depth in standard 5¼" flat bottom oil color tubes.

Freshly filtered oil and standard nickel sulfate solution shall be placed in the holes provided in the standard Wesson type color comparator and shall be compared by holding a No. 2403 (old catalog No. 241) Corning glass filter before the eye so that both tubes are viewed at once. This should be done without the use of the eye-piece tube. Reading shall not be made immediately after exposing the eyes to bright sunlight or other bright light and can best be made in a darkened room.

METHOD II (Optional)—The comparison of oil and standard shall be made at exactly 1" depth in standard 5¼" flat bottom oil color tubes.

Freshly filtered oil and standard nickel sulfate solution shall be placed in the holes of the proposed color test block, and shall be held vertically over an evenly illuminated matte white surface such as that provided by a magnesia block or a smooth white filter paper. Both tubes shall be viewed through a No. 2403 (old catalog No. 241) Corning glass filter held before the eye and compared on the basis of the brightness of the illuminated fields.

The white viewing surface shall be illuminated by a 100 Watt inside frosted Mazda bulb placed in a suitable reflector, such as that provided by a desk lamp, at a distance of 10" from the surface to the center of the bulb. Too great or too little illumination tends to make accurate reading more difficult. The reflector shall be located so the direct rays from the bulb do not strike the eye. The magnesia block or filter paper shall be placed on a dark nonreflecting surface, such as provided by a black cloth, in order to minimize direct reflection of light to the eye. Readings shall not be made immediately after exposing the eyes to bright sunlight or other bright light and can best be made in a darkened room.

LIST OF MATERIAL REQUIRED FOR SOYBEAN OIL COLORIMETER

1. COLORIMETER
   A. Either a Wesson Colorimeter
      See Methods of the American Oil Chemists' Society

also Central Scientific Catalogue or
Fisher Scientific Catalogue or
E. H. Sargent & Company Catalogue

B. Or wooden block colorimeter—see sketch attached.

2. COLORIMETER TUBES

A. Clear colorless glass tubes measuring approximately 154 mm long by 22 mm outside diameter and 19 mm inside diameter either plain or etched with lines 1" and 5¼" from bottom.

A. Central Scientific Company, Chicago, Illinois
   a. No. 28702 plain or 60¢
   b. No. 28707 with lines $1.00

B. Fisher Scientific Company, New York & Pittsburgh
   a. No. 7-356 oil sample tube with lines 60¢

C. E. H. Sargent & Company, Chicago, Illinois
   a. No. S-63855 A.O.C.S. sample tube 60¢

3. FILTER GLASS

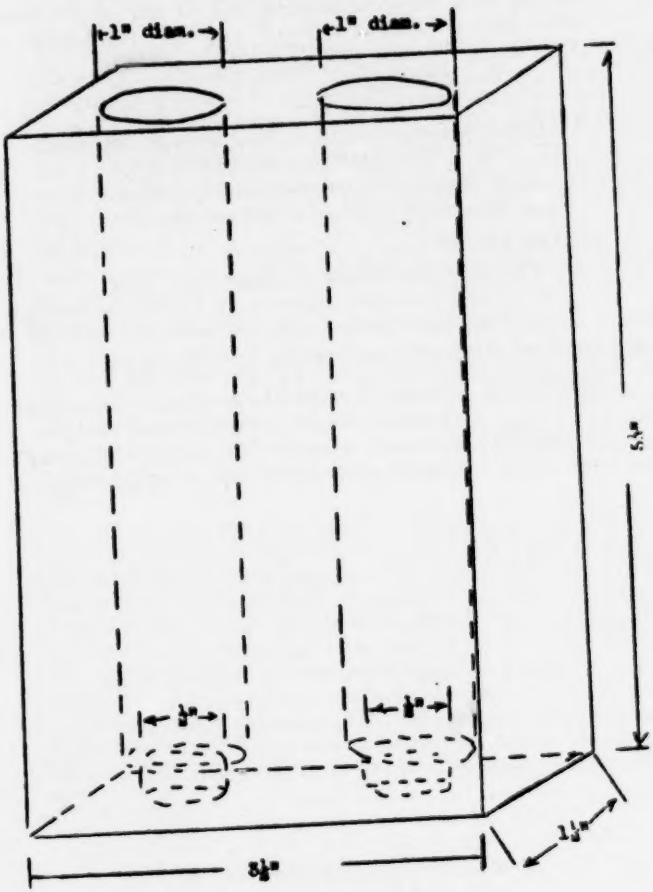
A. Corning Glass Works, Corning, New York.
   a. One 2" polished square of H. R. Pyrometer Shade Red. New number 2403. Old number 241. $1.25

4. NICKEL SULFATE SOLUTION STANDARDS

Standard A. Dissolve 7 grams of low cobalt $NiSO_4.6H_2O$ of reagent grade per 100 ml. of total solution.

Standard B. Dissolve 9 grams of low cobalt $NiSO_4.6H_2O$ of reagent grade per 100 ml. of total solution.

DESIGN FOR SOYBEAN OIL COLORIMETER



Material—Soft Wooden Block

OFFICIAL METHOD FOR OIL SAMPLING

(Page 23 of the handbook of the American Oil Chemists' Society)

1. Sampling while loading.—Sample shall be taken at discharge of pipe where it enters tank-car dome. The total sample taken shall be not less than 50 pounds (23 kg.), and shall be a composite of small samples of about 1 pound (450 grams) each, taken at regular intervals during the entire loading period. When the material flows freely and is not liable to clog, a sample may be taken continuously through a petcock attached at a suitable point on the discharge line or pump, the petcock to be ⅜ inch size or larger and to be kept flowing continuously during the pumping period and so regulated as to produce a sample of not less than 50 pounds (23 kg.) to represent the tank car. If necessary to sample the car after it is loaded, the official tube sampler should be used.

   The sample thus obtained shall be thoroughly mixed and uniform 3-pound (1.3 kg.) portions placed in air-tight 3-pound metal containers. At least three such samples shall be put up, one for the buyer, one for the seller, and the third to be sent to a referee chemist in case of dispute. All samples are to be promptly and correctly labeled and sealed.

2. Sampling from car on track when contents are solid.—(a) It is a difficult matter to draw a sample of hard product in a tank car and unless there is some reason or objection, the material should be liquified and the sample drawn as under (b). However, when necessary to sample while solid, the sample should be taken by means of a large trier measuring about 2 inches (5 cm.) across and about one and one-half times the depth of the car in length. Several tryerfuls are taken vertically and obliquely toward the ends of the car until 50 pounds are accumulated, and the sample is softened, mixed and handled as above.

   (b) When contents are liquid, lower the official sampler vertically through the oil with the bottom valve of the sampler wide open at a uniform rate, slow enough to permit the sampler to fill as it is lowered. It should require approximately 10 to 15 seconds for the sampler to reach the bottom. Close the bottom valve and withdraw the tube.

   Draw several similar samples in such a manner as to prevent the introduction of moisture and place in a clean container and thoroughly mix. The total sample should not be less than 25 nor more than 50 pounds.

   (c) If an inspection of the product indicates that there is a strata of sediment, emulsion, water, or a combination of these present they should be drawn off separately, weighed and sampled.

STANDARD SPECIFICATIONS FOR CRUDE SOYBEAN OIL FOR TECHNICAL USES

	Maximum	Minimum
*Iodine Value (Wijs)	....	130
Unsaponifiable Matter	1.5%	
Free Fatty Acids	1.5%	
Moisture and Volatile Matter (Allowance if over 0.2%)	0.3%	
Break (Modified Gardner Method)	0.60%	

*This specification applies only to high iodine value grade oil when stated in the original contract.

Any crude soybean oil sold under the above specifications which does not comply with these definitions of quality, shall be replaced free of expense to Buyer, unless Buyer and Seller mutually agree to the following allowances for off quality:

(a) Free Fatty Acid in excess of 1.5%	½% of purchase price for each ½% or fraction thereof.
(b) Moisture and Volatile Matter in excess of 0.2%	2/10% of purchase price for each 1/10% or fraction thereof.
(c) Break in excess of 0.60%	2/10% of purchase price for each 1/10% or fraction thereof.

Vacuum Oven Method, page 26, handbook of Official and Tentative Methods of the A. O. C. S.

APPARATUS.—Vacuum Oven, the Committee standard oven, or equivalent vacuum oven which will accomplish the desired purpose.

The standard F. A. C. vacuum oven (Figure 1), designed by J. R. Powell, has been developed with the idea of affording a simple and compact vacuum oven which will give as uniform temperatures as possible on the shelf. It consists of a piece of 10-inch (25-cm.) extra heavy iron pipe, with back and attachments welded on and turned down to dimensions. The front door can be made air-tight by grinding into position with emery flour, or a gasket may be used. The single shelf is heated by means of a brass coil soldered on and through which the vapor from boiling carbon tetrachloride is circulated.

Note.—The boiling points of carbon tetrachloride at various pressures are as follows (Annual Table of Constants, Vol. III, p. 113 (1912)):

C.	Mm.	°C.	Mm.
76.1	743	50.0	328
71.0	663	46.3	282
65.0	559	42.0	236
62.0	506	31.0	149
58.5	443	25.0	116
54.8	386		

The carbon tetrachloride, contained in a flask fitted with a reflux condenser, is heated by means of a small electric hot plate. The advantage of heating by means of a constant-boiling liquid, rather than by electric coils entailing the difficulties of electric control, is considerable.

The Powell oven is inexpensive and can be constructed by any ordinary machine shop. The actual cost should not exceed $50. Larger ovens of the same type may be constructed and, provided the heating coil is proportionately larger, should give equivalent results. Insulation of the oven is recommended, also attachment of a small petcock at a point low down on the door to regulate circulation within the oven.

Moisture Dish. A shallow glass dish, lipped, beaker form, approximately 6 to 7 cm. diameter and 4 cm. deep, shall be standard.

DETERMINATION.—Weigh out 5 grams (± 0.2 gram) of the prepared sample into a moisture dish. Dry to constant weight in vacuo at a uniform temperature, not less than 20° C.

nor more than 25° C. above the boiling point of water at the working pressure, which must not exceed 100 mm. of mercury.

Note.—The boiling points of water at reduced pressures are as follows:

Pressure Mm.	To 1° C.	+20° C.	+25° C.
100	52	72	77
90	50	70	75
80	47	67	72
70	45	65	70
60	42	62	67
50	38	58	63
40	34	54	59

Constant weight is attained when successive dryings for 1-hour periods show an additional loss of not more than 0.05 per cent. Report loss in weight as Moisture and Volatile Matter.

The vacuum-oven method cannot be considered accurate for fats of the coconut oil group containing free acid, and the Committee recommends that it be used only for oils of this group when they contain less than 1 per cent free acid. When more than 1 per cent free acid is present, the hot-plate method for moisture and volatile matter should be used.

Results comparable with those of the standard method may be obtained on most fats and oils by drying to constant weight 5-gram portions of the sample, prepared and weighed as above, in a well-constructed and well-ventilated air oven held uniformly at a temperature of 105° to 110° C. The thermometer bulb should be close to the sample. The definition of constant weight is the same as for the standard method.

The air-oven method cannot be considered even approximately accurate for the drying and semidrying oils and those of the coconut oil group. Therefore, for cottonseed oil, maize oil (corn oil), soy-bean oil, linseed oil, coconut oil, palm kernel oil, etc., the vacuum-oven or hot-plate method should always be used, except in the case of fats of the coconut group containing more than 1 per cent free acid, as noted above.

Hot-Plate Method, page 27, handbook of Official and Tentative Methods of the A. O. C. S.

HOT PLATE METHOD.—DETERMINATION. Weigh out 5- to 20-gram portions of the prepared sample into a glass beaker or casserole and heat on a heavy asbestos board over burner or hot plate, taking care that the temperature of the sample does not at any time go above 130° C. until the very end of the test (see below). During the heating rotate the vessel gently by hand to avoid sputtering or too rapid evolution of moisture. The approach of the end point may be judged by the absence of rising bubbles of steam and by the absence of foam

at the last. At this point, the heating should momentarily be carried on to incipient smoking (Caution!). Cool in desiccator and weigh.

Limitations. This method is applicable to all the ordinary fats and oils, including emulsions such as butter and oleomargarine, and high-acid coconut oil. It is not applicable, however, to certain abnormal samples such as naphtha extraction greases which contain, in addition to moisture, solvents of fairly high boiling point which are driven off with difficulty. In handling such samples it is possible to obtain satisfactory results by using the Kingman distillation method for actual moisture and steam distillation for the solvents. In difficult cases it may be advisable to determine the actual saponifiable matter present.

MODIFIED GARDNER BREAK TEST

Use method accepted by the A. O. C. S. and reported on page 131 in the June, 1940 issue of Oil & Soap and on page 382 in the July 15, 1940 Analytical Edition of Industrial and Engineering Chemistry.

REAGENTS. C. P. hydrochloric acid (sp. gr. 1.19), and C. P. carbon tetrachloride.

APPARATUS.

1. Beaker, Electrolytic Type, Capacity 180 Ml.
2. Thermometer, A. S. T. M. Open Flash. El (11C-39) El (11F-39).
3. Porcelain Crucible, Bitumen Type, A. S. T. M. Test D4-27, 1938.

Diameter at top	4.4 cm.
Diameter at bottom	3.6 cm.
Depth	2.5 cm.

PROCEDURE.

1. Heat a sufficient amount of the well-mixed sample to 75° C. (167° F.) and maintain at this temperature for about 5 minutes, so as to melt all fat-soluble particles which may be present.
2. Weigh 25 grams into the designated beaker, add 3 drops of the hydrochloric acid, and stir in thoroughly. Suspend the thermometer in the center of the oil-acid mixture, so that bulb is completely immersed but not touching the bottom of the beaker. Apply heat so that the temperature rise will be 74° to 79.5° C. (165° to 175° F.) per minute. (Caution. Do not stir or otherwise disturb the sample after heating has begun.) Heat to 289° C. (550° F.) and withdraw the flame. Cool to about 25° C. (77° F.) in a water bath or in air.
3. After cooling add, while stirring, 50 ml. of the carbon tetrachloride to dissolve the oil. Allow to stand for 1 hour, stirring at 15-minute intervals to remove any oil which may

be occluded to the surface of or within the separated material.

4. The crucible should be prepared with medium fiber asbestos, and the pad must be thick enough to prevent breaking through. Wash the mat with water and alcohol and dry to constant weight before using.

5. Filter the sample with the aid of a vacuum, using a policeman to remove any traces of break from the beaker. Wash the break on the crucible well, using not less than five 20-ml. portions of carbon tetrachloride. Drain the crucible dry after each addition and break the vacuum when each new portion is added, to ensure removal of all traces of oil. Dry the crucible at 105° C. to constant weight and determine the weight of the residue on the crucible.

CALCULATION. % break = weight of residue × 4.

IODINE NUMBER — WIJS METHOD

Page 31 of the handbook of Official and Tentative Methods of the A. O. C. S.

PREPARATION OF REAGENTS.—Wijs Iodine Solution. Dissolve 13.0 grams of resublimed iodine in 1 liter of C. P. glacial acetic acid and pass in washed and dried chlorine gas until the original thiosulfate titration of the solution is not quite doubled. Preserve the solution in amber glass-stoppered bottles, sealed with paraffin until ready for use. Mark on the bottles the date on which the solution is prepared and do not use Wijs solution that is more than 30 days old.

There should be no more than a slight excess of iodine, and no excess of chlorine. When the solution is made from iodine and chlorine, this point can be ascertained by not quite doubling the titration.

Note.—McIlhiney (J. Am. Chem. Soc., 29, 1222 (1907)) gives the following details for the preparation of the iodine monochloride solution:

The preparation of the iodine monochloride solution presents no great difficulty, but it must be done with care and accuracy in order to obtain satisfactory results. There must be in the solution no sensible excess either of iodine or more particularly of chlorine, over that required to form the monochloride. This condition is most satisfactorily attained by dissolving in the whole of the acetic acid to be used the requisite quantity of iodine, using a gentle heat to assist the solution, if it is found necessary, setting aside a small portion of this solution, while pure and dry chlorine is passed into the remainder until the halogen content of the whole solution is doubled. Ordinarily, it will be found that by passing the chlorine into the main part of the solution until the characteristic color of free iodine has just been discharged there will be a slight excess of

chlorine which is corrected by the addition of the requisite amount of the unchlorinated portion until all free chlorine has been destroyed. A slight excess of iodine does little or no harm, but excess of chlorine must be avoided.

The glacial acetic acid used for preparation of the Wijs solution should be of 99.0 to 99.5 per cent strength. For glacial acids of somewhat lower strength the Committee recommends freezing and centrifuging or draining as a means of purification.

0.1 N Sodium Thiosulfate Solution. Dissolve 24.8 grams of C. P. sodium thiosulfate in recently boiled distilled water and dilute with the same to 1 liter at the temperature at which the titrations are to be made.

Starch Paste. Boil 1 gram of starch in 200 c.c. of distilled water for 10 minutes and cool to room temperature.

An improved starch solution may be prepared by autoclaving 2 grams of starch and 6 grams of boric acid dissolved in 200 c.c. of water at 15 pounds pressure for 15 minutes. This solution has good keeping qualities.

Potassium Iodide Solution. Dissolve 150 grams of potassium iodide in water and make up to 1 liter.

0.1 N Potassium Bichromate. Dissolve 4.903 grams of C. P. potassium bichromate in water and make the volume up to 1 liter at the temperature at which titrations are to be made.

Occasionally potassium bichromate is found containing sodium bichromate, although this is rare. If the analyst suspects that he is dealing with an impure potassium bichromate, the purity can be ascertained by titration against freshly resublimed iodine. However, this is usually unnecessary.

Standardization of Sodium Thiosulfate Solution. Place 40 c.c. of the potassium bichromate solution, to which has been added 10 c.c. of the solution of potassium iodide, in a glass-stoppered flask. Add to this 5 c.c. of strong hydrochloric acid. Dilute with 100 c.c. of water, and allow the 0.1 N sodium thiosulfate to flow slowly into the flask until the yellow color of the liquid has almost disappeared. Add a few drops of the starch paste, and with constant shaking continue to add the 0.1 N sodium thiosulfate solution until the blue color just disappears.

DETERMINATION.—Weigh accurately from 0.10 to 0.50 gram (depending on the iodine number) of the melted and filtered sample into a clean, dry, 450-c.c. (16-ounce) glass-stoppered bottle containing 15 to 20 c.c. of carbon tetrachloride or chloroform. Add 25 c.c. of iodine solution from a pipet, allowing to drain for a definite time. The excess of iodine should be from 50 to 60 per cent of the amount added—that is, from 100 to 150 per cent of the amount absorbed. Moisten the stopper with a 15 per cent potassium iodide solution to prevent loss of iodine or chlorine, but guard against an amount suffi-

cient to run down inside the bottle. Let the bottle stand in a dark place for 30 minutes at a uniform temperature, and then add 20 c.c. of 15 per cent potassium iodide solution and 100 c.c. of distilled water. Titrate the iodine with 0.1 N sodium thiosulfate solution, added gradually with constant shaking, until the yellow color of the solution has almost disappeared. Add a few drops of starch paste and continue titration until the blue color has entirely disappeared. Toward the end of the reaction, stopper the bottle and shake violently, so that any iodine remaining in solution in the tetrachloride or chloroform may be taken up by the potassium iodide solution. Conduct two determinations on blanks which must be run in the same manner as the sample except that no fat is used in the blanks. Slight variations in temperature quite appreciably affect the titer of the iodine solution, as acetic acid has a high coefficient of expansion. It is therefore essential that the blanks and determinations on the sample be made at the same time. The number of cubic centimeters of standard thiosulfate solution required by the blank, less the amount used in the determination, gives the thiosulfate equivalent of the iodine absorbed by the amount of sample used in the determination. Calculate to centigrams of iodine absorbed by 1 gram of sample (= per cent iodine absorbed).

UNSAPONIFIABLE MATTER

(For normal animal and vegetable fats and oils.)

Page 30b of the handbook of Official and Tentative Methods of the A. O. C. S.

EXTRACTION CYLINDER.—The cylinder shall be glass-stoppered, graduated at 40, 80, and 130 c.c., and about 35 mm. (1⅜ inches) in diameter and about 30 cm. (12 inches) high.

PETROLEUM ETHER.—Redistilled petroleum ether, A. O. C. S. specifications. A blank must be made by evaporating 250 c.c. with about 0.25 gram of stearin or other hard fat (previously brought to constant weight by heating) and drying as in the actual determination. The blank must not exceed a few milligrams.

DETERMINATION.—Weigh 5 grams (± 0.20 gram) of the prepared sample into a 200-c.c. Erlenmeyer flask, add 30 c.c. of redistilled 95 per cent (approximately) ethyl alcohol and 5 c.c. of 50 per cent aqueous potassium hydroxide, and boil the mixture for 1 hour under a reflux condenser. Transfer to the extraction cylinder and wash to the 40-c.c. mark with redistilled 95 per cent ethyl alcohol. Complete the transfer, first with warm then with cold water, till the total volume is 80 c.c., and finally with a small quantity of petroleum ether. Cool the cylinder and contents to room temperature and add 50 c.c. of petroleum ether. Shake vigorously for 1 minute and allow to settle until both layers are clear, when the volume of

the upper layer should be about 40 c.c. Draw off the petroleum ether layer as closely as possible by means of a slender glass siphon into a separatory funnel of 500 c.c. capacity. Repeat extraction at least six more times, using 50 c.c. of petroleum ether each time. Wash the combined extracts in a separatory funnell three times with 25-c.c. portions of 10 per cent alcohol, shaking vigorously each time. Transfer the petroleum ether extract to a wide-mouth tared flask or beaker, and evaporate the petroleum ether on a steam bath in an air current. Dry as in the method for Moisture and Volatile Matter. Any blank must be deducted from the weight before calculating unsaponifiable matter. Test the final residue for solubility in 50 c.c. of petroleum ether at room temperature. Filter and wash free from the insoluble residue, if any, evaporate, and dry in the same manner as before. Take up the final residue in 50 c.c. of warm ethyl alcohol, neutralized to phenolphthalein and titrate to the same color as the original neutral alcohol with N/10 sodium hydroxide solution and calculate to oleic acid. Deduct this figure from the gross weight previously found and report as unsaponifiable matter. The Committee wishes to emphasize the necessity of thorough and vigorous shaking in order to secure accurate results. The two phases must be brought into the most intimate contact possible; otherwise low and disagreeing results may be obtained.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. [redacted] 28

FREMONT CAKE & MEAL COMPANY, a Corporation,
Petitioner,

vs.

WILSON & COMPANY, INC., a Corporation,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEBRASKA

BRIEF FOR THE RESPONDENT IN OPPOSITION TO THE PETITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 675

FREMONT CAKE & MEAL COMPANY, a Corporation,
Petitioner,

vs.

WILSON & COMPANY, INC., a Corporation,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEBRASKA

BRIEF FOR THE RESPONDENT IN OPPOSITION TO THE PETTTION

OPINION BELOW

The opinion of the Supreme Court of Nebraska (R. 51-69) is reported at 43 N. W. (2d) 657, 153 Neb. 160.

JURISDICTION

The judgment of the Supreme Court of Nebraska was entered on July 24, 1950 (R. 50). A motion for rehearing was overruled on January 13, 1951 (R. 91). The

petition for a writ of certiorari was served on Respondent's counsel on May 12, 1951. Petitioner invokes the jurisdiction of this Court under Title 28, United States Code, Section 1257(3).

REASONS WHY CERTIORARI SHOULD BE DENIED

1. The Federal question sought to be presented is a moot question. The claim that State Courts must enforce the Federal Arbitration Act is not available to a party who has failed to qualify himself to invoke arbitration.

2. Two Federal Courts have held that the Petitioner was not entitled to arbitrate in any event because it had taken none of the steps called for by the arbitration agreement to initiate arbitration, and its course in the matter of arbitration throughout had been dilatory and obstructive. In the face of that finding no Federal question of substance is presented for decision by raising the abstract question as to whether or not State Courts, in States where agreements to arbitrate are not binding, must nevertheless enforce the Federal Arbitration Act.

3. Where the party presently invoking the Federal Arbitration Act took no steps toward arbitration in the first instance, and the other party filed suit in the State Court, which Court found that the party presently seeking arbitration had no legal justification for failing to perform the contract, the finding is the equivalent of a finding that there is nothing to arbitrate. Hence an application to this Court for a writ of certiorari to determine whether or not the State Court erred in refusing to decree specific performance of the arbitration agreement is frivolous and futile and presents no Federal question.

4. The Federal Arbitration Act is a procedural act and relates to remedies only, as distinguished from substantive rights. The provisions of the Federal Arbitration Act being procedural will not be enforced in the Courts of Nebraska where the law is settled that arbitration agreements are not enforceable. The law of the forum controls.

STATEMENT OF THE CASE

On July 11, 1947, Wilson & Company, Inc., filed a suit in the United States Court for the District of Nebraska against Fremont Cake & Meal Company asking damages in the sum of $43,000.00 for breach of contract to supply plaintiff with 36 cars of soybean oil. Fremont filed an application asking the Court to stay the trial until arbitration could be had in accordance with the Federal Arbitration Act, 9 U. S. C. A., Section 3. This motion was sustained. On July 19, 1948, no answer yet having been filed, Wilson & Company, Inc., dismissed the action then pending without prejudice.[1]

The Fremont Company took no steps in the direction of arbitration either before or after the dismissal and on October 29, 1948, Wilson & Company, Inc., brought an action against the Fremont Company in the District Court of Dodge County, Nebraska, on the same cause of action as that brought in the United States District Court.[2]

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1 For history of this original action see **Fremont Cake & Meal Co. v. Wilson & Co., Inc.,** 86 Fed. Supp. 968, and **Fremont Cake & Meal Company vs. Wilson & Company, Inc.,** 183 Fed. (2) 57, 58.

2 See recital of facts in 183 Fed. (2) 57, 58, Column 1; Record, p. 1.

For more than five months thereafter the Fremont Company did nothing in the way of attempting to secure arbitration, and then on April 8, 1949, instituted an action against Wilson & Company, Inc., in the District Court of the United States for the District of Nebraska by the filing of a complaint whose prayer was that—

> "the Court enter an order directing that arbitration proceed between the parties herein in the manner provided for in the contract, Exhibit A, and under the rules of the National Soybean Processors Association, as provided for in the Act of February 12, 1925, in U. S. C. A., Title 9, Section 4."[3]

On June 24, 1949, the Fremont Company filed in the State Court action a "motion for a continuance and to stay further action in this proceeding." The motion was—

> "to continue this action and stay any further proceedings therein until a decision is rendered by Honorable John W. Delehant, District Judge, in an action now pending in the District Court of the United States for the District of Nebraska, Omaha Division, known as 'Fremont Cake & Meal Company, A Corporation, Plaintiff, vs. Wilson & Company, Inc., A Corporation, Defendant, Civil 69-49,"[4]

being the action in which, as above indicated, the Fremont Company had asked for a mandatory order requiring Wilson & Company to proceed with arbitration in accordance with the terms of the contract.

On September 9, 1949, the latter motion was overruled (R. 37, fol. 32).

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3 See recital of facts in **Fremont Cake & Meal Company vs. Wilson & Co.**, 86 Fed. Supp. 968, 970, Column 1; Record, p. 10, fol. 15.

4 Record, p. 8, fol. 13.

On September 13, 1949, the Fremont Company filed another motion for a stay by which motion that company moved the Court—

> "To stay the trial of this action until arbitration can be had in accordance with the provisions and terms of the contract and in the manner provided by the Act of February 12, 1925, U. S. C. A., Title 9, Section 3, and as is provided under the laws of the State of Nebraska." (R. 37, fol. 33.)

On the same date and prior to any ruling on the above motion, the Fremont Company filed its answer in the State Court. This answer is peculiar in form in that Paragraph I reads as follows:

> "Defendant prays the court to stay this proceeding and direct that arbitration be had between the parties in accordance with the requirements of the contract, Act of February 12, 1925, passed by the United States Congress, in U. S. C. A., Title 9, Sec. 3, and the statutes and laws of the State of Nebraska." (R. 5, fol. 9.)

But in the prayer itself defendant simply—

> "Prays that the case be stayed until arbitration proceedings are instituted and completed according to the contract." (R. 7, fol. 11.)

The motion to stay was overruled at the beginning of the trial (R. 95, fol. 10). Counsel for Fremont Company then orally moved the Court to dismiss the action—

> "for the reason that there is no showing that any arbitration proceedings have been held in regard to this controversy in accordance with requirements of the contract and the Statutes of the United States and the laws of the State of Nebraska and the action is premature at this time." (R. 95, fol. 10.)

This motion was likewise overruled (R. 95, fol. 10), and the case proceeded to trial.

Petitioner on page 4 of his petition asserts that large portions of the contract defining the rights and liabilities of the parties were excluded on the ground that there was a reference to arbitration in such portions. No portions of the contract were excluded. Some portions of the *Trading Rules* of the Soybean Association were ruled out on the ground that they were not material, but the only portions of the Trading Rules which were excluded on the ground that they pertained to arbitration were Rules 115 and 116 (R. 186).

The only thing in defendant's motion to dismiss the case that referred to arbitration was the motion that the case be dismissed for the reason that "this contract involves interstate commerce and must be submitted to arbitration in accordance with the requirements of the contract, the Federal statutes, and the State law" (R. 167).

Thus Petitioner's effort in the trial court was to stay the trial until Petitioner could get an order from the Federal Court requiring Wilson & Company to arbitrate. The idea that the State Court should issue such an order was an after-thought.

The trial resulted in a directed verdict for the plaintiff, Wilson & Company, Inc., in the sum of $41,175.00, and judgment was rendered in plaintiff's favor for that amount (R. 44, fols. 42, 43), which judgment was subsequently affirmed by the Supreme Court of Nebraska (R. 51, 52); and 153 Neb. 160, 43 N. W. (2) 657.

Both the State Court case and the Federal Court case were tried on the merits in the trial courts in September of 1949. The Federal Court case was tried to the Court without a jury on September 16, 1949. It was then sub-

mitted on briefs (86 Fed. Supp. 971, Column 2). Trial of the State Court case started on September 19, 1949 (R. 93, fols. 1-3). As stated the judgment of the State District Court was entered on September 24, 1949 (R. 44), and under date of October 8, 1949, Federal Judge Delehant handed down his decision in which he denied the Fremont Company's application for an order to compel arbitration, and held that the Fremont Company had not only taken none of the explicitly defined steps to initiate arbitration, but that "its course in the entire controversy has been dilatory and obstructive only" (86 Fed. Supp. 896; 183 F. (2d) 57, 59). This holding was affirmed by the Circuit Court of Appeals (183 Fed. (2) 57). The affirmance was under date of June 7, 1950. The decision of the District Court of Dodge County, Nebraska, was affirmed by the Supreme Court of Nebraska on July 24, 1950 (153 Neb. 160, 43 N. W. (2) 657).

ARGUMENT

From the above statement it will be seen that both the United States District Court and the Circuit Court of Appeals held that the Fremont Company was not entitled to arbitration in any event because it had taken none of the steps to initiate arbitration called for by the arbitration agreement, and its course in the matter of arbitration throughout had been so dilatory and obstructive that it was not an "aggrieved party," within the meaning of Title 9, U. S. C. A., Section 4. Therefore, when the State Court, on September 9, 1949, overruled Fremont's motion for a continuance of the State Court action "until a decision is rendered by Honorable John W. Delehant, District Judge," it created no Federal question since Judge Delehant held a month later that Fremont was not entitled to arbitration.

Likewise when the State Court Judge, at the start of the trial on September 19 (R. 95), overruled Fremont's motion "to stay the trial of this action until arbitration can be had in accordance with the provisions and terms of the contract and the manner provided by the Act of February 12, 1925, U. S. C. A., Title 9, Section 3," no Federal question was created because it was later definitely and finally adjudicated (86 Fed. Supp. 696, 183 Fed. (2) 57) that Fremont had never qualified itself to invoke arbitration. What difference does it make then that the State Court refused to stay the trial pending the decision of the Federal Court case? Where is the Federal question?

Counsel for the Fremont Company argues that the Federal question is whether the State Court should have entered an affirmative order directing the parties to proceed to arbitration in accordance with the requirements of the contract and pursuant to U. S. C. A., Title 9, Sections 3 and 4. This is an after-thought. The Fremont Company never asked for such an order in the prayer of any pleading that it filed in the trial court or in any oral request made at the trial. It did, in the first paragraph of its answer, filed in the State Court, ask the court to direct the parties to proceed to arbitration pursuant to U. S. C. A., Title 9, Section 3, but it didn't ask for an order of that sort in the prayer of the answer. The prayer was merely that "the case be stayed until arbitration proceedings are instituted and completed according to the contract" (R. 5, fol. 9; R. 7, fol. 11). But it makes no difference whether Fremont Company did or did not in the State Court ask for an order from that court directing the parties to proceed to arbitration under the terms and pursuant to the Federal Arbitration Act. It makes no difference whether in the abstract it is the duty

of a state court to enforce the Federal Arbitration Act or not since, in this case, the Circuit Court of Appeals of the Eighth Circuit has held that by reason of the bad faith of the Fremont Company and its failure to take the necessary preliminary steps toward arbitration that company was not entitled to enforce the arbitration clause of the contract in any event in any court. There was no attempt to procure certiorari in that case and the decision has become final.

This court has said that "the judicial power does not extend to the determination of abstract questions." *Ashwander v. Tennessee Valley*, 297 U. S. 288, 56 S. Ct. 466, 472, 80 L. Ed. 688; *Fremont Cake & Meal Company v. Wilson & Company, Inc.*, 183 Fed. (2) 57, 59, 60.

But, assuming that this Court should ultimately hold that state courts in states which do not enforce arbitration agreements must nevertheless do so where contracts involving interstate commerce are concerned, how could such a decision be of any conceivable benefit to Petitioner in an action already determined by a decision of the Supreme Court of Nebraska? It was almost two years after the breach of the contract before Wilson & Company brought its suit in the state court.[5] During that time the Fremont Company had done nothing in the way of initiating arbitration proceedings, and it did nothing in that respect for more than five months thereafter, when it instituted its suit in the Federal Court to enforce its claimed arbitration rights. It is impossible to reconcile Petitioner's claim that it "tried in every way to get the matter decided by arbitration" (Petition, page 15), with

5 It was in November of 1946 that Fremont notified Wilson that they would not ship the oil at the contract price (R. 117-126).

the findings of the Federal Judge in 86 Fed. Supp. 968, made on October 8, 1949, as follows:

> "It has taken no affirmative action looking to the resolution, by any forum, of its differences with Wilson & Company * * *. Despite the early threats of Wilson & Company in two letters, supra, to invoke the arbitration clause of the contract, it remained silent touching arbitration, and did not itself initiate the process or even assent to Wilson & Company's suggestion of its availability. Wilson & Company then sued in this court. Still, Fremont Company took no steps to commence arbitration. It obtained the ruling announcing the granting of its motion for a stay of the proceedings in that suit, pending arbitration. * * * Even then, with its right to require arbitration vindicated, it remained silent and inert until the first case here had been instituted and pressed for nearly six months, when it started this action." (86 Fed. Supp. 968.)

In the meantime the case had been tried in the State Court in which Court the Fremont Company submitted all the defenses and all the excuses that it could think of to justify its failure to perform the contract. The trial Court ruled that those defenses and excuses were without merit and the State Supreme Court, after a careful review of all of Fremont's contentions came to the same conclusion. Two State Courts have reviewed Petitioner's claims and have arrived at the conclusion that there was no justification for Fremont's default. It is the equivalent of an adjudication that there was nothing to arbitrate, yet Petitioner would have this Court set aside the findings of the State Court and hold that the controversy must be submitted to arbitration, this on the theory that notwithstanding the fact that two Federal Courts have held that Petitioner has failed to qualify itself to invoke arbitration under the Federal Arbitration Act, and two

Nebraska Courts have held that there was nothing to arbitrate, it nevertheless must be given that opportunity.

Petitioner, of course, is under pressure to come up with some reason why justice will be done by discarding the efforts of the Nebraska Courts and relegating this controversy to arbitration. His suggestion is (Petition, pp. 17-19), that arbitraters would be better able to determine the various alleged technical questions involved in the substantive controversy between the parties. The inference apparently sought to be made is that the Courts of Nebraska did not correctly determine those questions. The record of the trial and the comprehensive reviewing opinion of the Supreme Court of Nebraska clearly demonstrate the total lack of merit in Petitioner's suggestion.

Petitioner also argues (Petition, p. 19) that:

> "The State Court even held that defenses because of war and other contingencies could not be considered because the agreement provided for their enforcement by arbitration."[6]

Such defenses were, in fact, considered by the Nebraska Courts, the Supreme Court of Nebraska stating in its opinion in this respect (R. 64) that—

> "The evidence does not show that the Fremont Company was hindered, delayed or prevented by any act of war from processing and delivering the six tanks of soybean oil in question. The evidence does show that Wilson & Company consented to and acquiesced in each delay of delivery without waiving any of its rights under the contract to delivery of the six tank cars of oil in question. No facts existed when the contract in the instant case was made and assumed by the Fremont Company, which made it im-

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6 This statement is incorrect. Arbitration had nothing to do with the ruling out of this defense. (See 43 N. W. (2d) 666, Column 2; R. 64.)

possible of performance." (43 N. W. (2) 666, column 2.)

This Court has no jurisdiction to review the decision of the Supreme Court of Nebraska on the actual substantive controversy between the parties. This Court has consistently held that its power to review State judgments is limited to a determination of the Federal questions involved. *Murdock v. City of Memphis,* 87 U. S. 590 (1874); *Herb v. Pitcairn,* 324 U. S. 17 (1944). The actual substantive controversy between the parties on the contract involved does not present any such question.

It follows from the above that we do not have here the presentation of a Federal question of substance for the consideration of this Honorable Court. Consideration of the question which Petitioner would like to present is barred by the fact that the Circuit Court of Appeals of the Eighth Circuit has said that Petitioner is not entitled to arbitration pursuant to the Federal Act, and the Supreme Court of Nebraska has said, in effect, that even if Petitioner had the technical right to arbitrate there is in this case no area of compromise or field for arbitration. But even if these two insurmountable hurdles did not stand in Petitioner's pathway, still Petitioner has no Federal question of substance for presentation to this Court.

The decision of the Supreme Court of Nebraska appealed from, denying to Petitioner a claimed right to arbitration of the controversy between the parties, was based upon the long established rule of law prevailing in that State that its courts will not enforce arbitration agreements (R. 62-63). The question of arbitration is one of "remedy only," *Marine Transit Corporation v. Dreyfus,* 284 U. S. 263, 277 (1931); *Red Cross Line v. Atlantic Fruit Co.,* 264 U. S. 109 (1923). Matters of rem-

edy are governed by the law of the forum. *Central Vermont Railway Company v. White,* 283 U. S. 507 (1914). It follows that the question of whether or not the courts of the State of Nebraska may deny Petitioner the claimed right of arbitration is to be determined under the law of that state and not under the Federal Arbitration Act.

It is settled beyond doubt that the Federal Arbitration Act is a procedural act and relates to remedies only, as distinguished from substantive rights. This Court so held in the *Marine Transit Corporation* case. Several Circuit Courts of Appeals have likewise held. *Murray Oil Products Comany, Inc., v. Mitsui & Company* (C. C. A. 2, 1944), 146 Fed. (2) 381; *Gatliff Coal Co. v. Cox* (C. C. A. 6, 1944), 142 Fed. (2) 876; *Barry v. Bache,* (C. C. A. 5, 1942), 125 Fed. (2) 493; *Pacific Indemnity Co. v. Insurance Co.* (C. C. A. 9, 1928), 25 Fed. (2) 930; *Fremont Cake & Meal Company v. Wilson & Company, Inc.,* 183 Fed. 57 (C. C. A. 8). The Court of Appeals of New York has similarly construed the New York Arbitration Act.[7] *Berkowitz v. Arbib & Holberg,* 230 N. Y. 261, 132 N. E. 288 (1921).

Petitioner's contention that the Federal Arbitration Act grants to it a right of arbitration which must be enforced by the Courts of Nebraska is not supported by the

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7 The Federal Arbitration Act was generally patterned after the New York Act, **Shanferoke Coal & Supply Company v. Westchester Service Corp.** (C. C. A. 2, 1934), 70 Fed. 2) 297, 298, affirmed 293 U. S. 449. In the **Berkowitz** case, Justice Cardozo, then a member of the New York Court, succinctly stated the nature of arbitration and the law governing same as follows:

> "• • • The rule to be applied is the rule of the forum. Both in this court and elsewhere, the law has been so declared. Arbitration is a form of procedure whereby differences may be settled. It is not a definition of the rights and wrongs out of which differences grow." (130 N. E. 288, 290.)

cases cited. In *Jackson v. Kentucky River Mills,* 65 Fed. Supp. 601, the observation of the District Court for the District of Kentucky as to "substantive" rights under the Federal Arbitration Act was dictum since the case was decided not on that point, but on the proposition that the judgment in question was void for lack of jurisdiction over the person of the defendant.

In *Wilson & Company, Inc., v. Fremont Cake & Meal Company,* 77 Fed. Supp. 364, which involved the very controversy now before this Court, the United States District Court for the District of Nebraska did not, in fact, make the statement ascribed to it on page 10 of the petition. That statement was merely quoted from another case in the District Court analysis of numerous cases involving arbitration questions (77 Fed. Supp. 364, 376). The District Court in the *Wilson* case,[8] while granting Petitioner the stay requested pending arbitration, specifically stated that the arbitration issue "is one of procedure, not of substantive right" and that respondent had "the absolute choice of forums for the recovery of the damages it claims" (77 Fed. Supp. 364, 379).

Petitioner cites the case of *Red Cross Line v. Atlantic Fruit Co.,* 264 U. S. 109, 123, as showing that this Court has decided that a substantive right created by an agreement to submit disputes to arbitration is recognized as a perfect obligation. This case did not involve the Federal Arbitration Act. It merely decided that the New York Arbitration Act was not in conflict with the exclusive jurisdiction of the admiralty courts. The ref-

8 Respondent voluntarily dismissed this action in the United States District Court for the District of Nebraska and thereafter brought the action appealed from in the District Court of Dodge County, Nebraska.

erence to the substantive right created by an arbitration agreement as being a perfect obligation plainly meant a perfect obligation between the parties in a forum where the remedy of arbitration was available. The very basis for the decision was that arbitration is a matter of remedy to be determined by the law of the forum. This was further expressly recognized in *Marine Transit Corporation v. Dreyfus,* supra, where, in commenting on the *Red Cross Line* decision, this Court stated (284 U. S. 263, 277-278):

> "* * * It was because the question was one of remedy only, that this Court decided that a State, by virtue of the clause saving to suitors 'the right * * * of a common-law remedy,' had the power 'to confer upon its courts the authority to compel parties within its jurisdiction to specifically perform an agreement for arbitration, which is valid by the general maritime law, as well as by the law of the state,' and is contained in a maritime contract made within the state and there to be performed. Red Cross Line v. Atlantic Fruit Company, supra, at page 124 of 264 U. S., 44 S. Ct. 274, 277."

For the same reason, the courts of Nebraska have the inherent authority to determine the remedies of litigants therein and to deny a remedy of arbitration which is contrary to the long established public policy of the State. See *California Prune and Apricot Assoc. v. Catz American Co.* (C. C. A. 9, 1932), 60 Fed. (2) 788, where a Federal Court refused to compel arbitration under the California Arbitration Act.

The cases of *Textile Workers Union of America, C. I. O., v. Aleo Mfg. Co.,* 94 Fed. Supp. 626,[9] and *Shirley-Herman Co. v. International Hod Carriers, etc.,* 182 Fed.

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9 The purported quotation from this case appearing in Footnote 4, page 10 of the Petition is one of the publisher's headnotes.

(2) 806, cited by Petitioner, are clearly distinguishable from any issue here presented. Those cases involved questions under the Labor Management Relations Act of 1927, 29 U. S. C. A., Sec. 185, et seq., whereby Congress created substantive rights in the exercise of its power under the Commerce Clause, and also provided a procedure for the enforcement of those rights.

Arbitration relating to the matter of remedy only, the conclusion is inescapable that the provisions of Section 2 of the Federal Arbitration Act, providing that arbitration agreements shall be valid, irrevocable and enforceable, declares the law of the forum in the Federal Courts only.

The Fremont Company never had any justification for failing to deliver the cars of oil covered by the contract in controversy. It never became interested in arbitration until Wilson & Company had gone to Court with the controversy. It then became interested in arbitration only as a means of stalling off court action. And now that two Federal Courts have found against it, it seeks to postpone the day of accounting by presenting to this Court the abstract question as to whether or not the courts of states which do not enforce arbitration agreements must adopt the procedure of the Federal Arbitration Act in disputes arising under contracts involving interstate commerce. It is not a bona fide presentation of a Federal question. It is simply a final attempt to escape the payment of a just debt.

Respectfully submitted,

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